United States Court of Appeals

for the Second Circuit

APPENDIX

to be seized ... General searches have long been deemed to violate

76-1504 76-1505

United States Court of Appeals
For the Second Circuit

UNITED STATES OF AMERICA,

Appellee,

v.

WILLIAM R. BALOG, ET. AL.,

Appellants.

UNITED STATES OF AMERICA,

Appellee,

v.

ROGER SPINELLI, ET. AL.,

Appellants.

On Appeal From The United States District Court
For The District Of Connecticut

JOINT APPENDIX
(Volume II—Pages 427-853)

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the Connecticut General Statutes." Section 54-197 was at that

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It is submitted that the phrases "gambling records" and

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UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF CONNECTICUT

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U.S. DISTRICT COURT
NEW HAVEN, CONN.

UNITED STATES :

VS : DOCKET NO. H-298

NICHOLAS V. LANESE :

MOTION TO SUPPRESS

The defendant, Nicholas V. Lanese, having been charged in the above-entitled criminal indictment, respectfully moves the Court, pursuant to Rule 41(f) of the Federal Rules of Criminal Procedure and the 4th Amendment to the United States Constitution, to suppress for use as evidence against him the items seized on January 1, 1972 pursuant to a search warrant issued for the premises known as 3765 Main Street, Bridgeport, Connecticut, more particularly the first floor of a three story white frame building as further described in the command of said search warrant and to suppress the items enumerated in the inventory and return to said warrant, a copy of which is attached hereto and made Exhibit A, for the following reasons:

1. On or about December 30, 1971 a search and seizure warrant was issued to search the premises known as 3765 Main Street, Bridgeport, Connecticut, more particularly the first floor of said premises known as the "New Frontier Restaurant".

7/19/76
For reasons stated in open court the motion is denied
RC Zampano
USDJ

MICROFILM
JUL 26 1976
BRIDGEPORT

2. On or about January 1, 1972, in pursuant to said search and seizure warrant, the premises known as the New Frontier Restaurant, was searched by members of the Federal Bureau of Investigation, and local police officers and the items listed in the inventory and return, a copy of which is attached hereto and made Exhibit A.

3. Said search and seizure was unreasonable and invalid for the following reasons:

a. The command of said search and seizure warrant authorized the seizure of "gambling records and wagering paraphernalia and evidence of a criminal offense in violation of laws of the United States, including but not limited to, betting slips and records, account sheets and books, line and price sheets and notations, sports information papers and schedules, telephone instruments, slips and books, lists of code names, financial statements, and United States currency... The command of said search and seizure warrant was overly broad and left to the discretion of the executing officers what items were to be seized, thus constituting a general warrant and rendering said search conducted under its authority as a general exploratory search.

b. The specific items included within the command of said warrant, and set forth above, include innocuous items such as account sheets and books, sports information papers and schedules, slips and books, financial statements and United States currency, bearing no relation to the crime purported to have been committed, as further set forth in the command of said search and seizure warrant.

"[illegible] must be informed of some of the underlying

4. Said search and seizure is further invalid in that the affidavit in support of said search and seizure warrant fails to set forth sufficient, reliable facts, to allow a neutral and dettached magistrate to make an independent determination that probable cause existed to believe that the items sought to be seized were present on the premises, in that:

a. The bulk of the information set forth in the affidavit of Special Agent Danny F. Steinke, and relied upon by Special Agent Steinke concluding that probable cause existed to justify the search and seizure, was Special Agent Steinke's synopses of phone conversations between certain named individuals obtained as a result of a Court ordered wire tap in December of 1971. Within Special Agent Steinke's synopses of conversations seized pursuant to said wire tap are statements attributed to the defendant, Nicholas Lanese At page 8 of said affidavit it is related that on December 17, 1971 at 2:34 p.m. William Balog operating telephone number 372-5434, received a phone call from Nicholas Lanese at which time they allegedly discussed aspects of a purported gambling operation. It appears from this paragraph of Agent Steinke's affidavit that the identity of Nicholas Lanese and William Balog as the parties to said conversations has been established. An examination of the transcript of this conversation indicates that the parties to said conversation were listed as "Bill" and "UM", which appears to be an abreviation for the phrase "unidentified male" employed throughout the wire tap transcripts.

fatality taints the affidavit of Agent Steinke.

Special Agent Steinke fails to set forth any facts indicating the manner in which he concluded that the parties to said conversation were in fact William Balog and Nicholas Lanese. The identification of the parties to that conversation contained in paragraph 8 of the affidavit is a bare conclusion and assertion by Special Agent Steinke not founded upon fact and further constitutes a deception or other imposition upon the issuing magistrate. At page 9 of said affidavit a conversation is related again between William Balog and Nicholas Lanese as having occured at 7:52 p.m. on December 17, 1971. An examination of the transcript of said conversation indicates that said conversation occured between Bill Balog and "UM" later referred to in conversation as "Nick." No facts are set forth in said affidavit to justify the conclusion of Agent Steinke that Bill Balog was in fact a party to said conversation and that "Nick" was in fact Nicholas Lanese.

b. Said affidavit fails to set forth sufficient facts to allow a magistrate to determine that probable cause exists to believe that the items specified in the command of said warrant were in fact upon the premises of the defendant, in that, said affidavit merely relates conversations seized pursuant to the Court ordered wire tap and combines the synopses of said conversations with the speculation and conjecture of Agent Steinke, purportedly based on his experience, as set forth under the title "sports bookmaking" on pages 1, 2,3,4 of said affidavit.

c. Said affidavit is further invalid in that pages 5 and 6 of said affidavit relate information received from an informant, without indicating sufficient facts to establish a reliability of said informant.

d. Said affidavit is further invalid in that the greater part of the information related therein was obtained as a result of electronic surveillance. Said electronic surveillance constituted unreasonable and invalid search and seizure for the reasons more particularly stated in defendant's motion to suppress said electronic surveillance.

WHEREFORE, the defendant prays that his motion to suppress be granted and the items enumerated above be returned to him.

THE DEFENDANT

BY Richard T. Meehan
RICHARD T. MEEHAN
His Attorney

ORDER

After hearing upon the foregoing Motion, it is hereby ordered that the following items be suppressed:

THE COURT

BY _____, J.

This is to certify that a copy of the foregoing has been mailed, postage prepaid, to John R. Tarrant, Special U.S. Attorney and to Peter R. Casey, Assistant U.S. Attorney for the District of Connecticut.

Richard T. Meehan
RICHARD T. MEEHAN
Attorney at Law
37036

RETURN

I received the attached search warrant , 19 , and have executed it as follows:

On , 19 at o'clock M, I searched { the person / the premises } described in the warrant and

I left a copy of the warrant with NICHOLAS V. LANESE
name of person searched or owner or "at the place of search"

together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

Found in pants pocket:
1) U.S. currency in amount of (#435.00) four hundred & thirty-five dollars
2) Currency in a fold totaling (#150.00) fifteen hundred & ons dollars: Total #1936.00
Above seized by: Edward P. O'Connor
Special Agent, FBI

This inventory was made in the presence of NICHOLAS V. LANESE, PETER H. DOLAND and EDWARD P. O'CONNOR

I swear that this Inventory is a true and detailed account of all the property taken by me on the warrant.

Subscribed and sworn to and returned before me this day of , 19

U.S. Magistrate.

UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF CONNECTICUT

FILED
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CLERK
U.S. DISTRICT COURT
BRIDGEPORT, CONN.

UNITED STATES

VS

WILLIAM BALOG

NICHOLAS LANESE

RICHARD LANESE

DOCKET NO. H-298

BRIEF IN SUPPORT OF DEFENDANTS' MOTIONS TO SUPPRESS

The defendants, Nicholas Lanese, William Balog, and Richard Lanese, by separate motions have moved to suppress the fruits of four physical searches and the items seized as a result thereof. The central issues in each motion are founded upon the same principles of law, and thus one brief is herewith submitted in support of these central claims. The additional issues raised on behalf of Richard Lanese and William Balog will be discussed in an addendum to this brief.

FACTS:

In December of 1971 authority was granted for a wire tap to be placed on a number of phones within the Bridgeport and Milford areas to investigate the possible commission of offenses involving gambling, in contravention of the laws of the State of Connecticut. During the course of said wire tap investigation, conversations were seized, the parties thereto alleged to be the

[illegible] (1974) to provide support for their arguments. These blanket [illegible]

defendants in this indictment. As a result of said wire tap surveillances and information claimed to be received from an informant an affidavit was presented to a magistrate of the Federal District Court, to search a number of private homes, apartments and places of business, and to seize items purportedly relating to the commission of crimes as set forth in Title 18, United States Code, Sections 1955, 2 and 371. On January 1, 1972 members of the Federal Bureau of Investigation, accompanied by local police officers, conducted a variety of searches and seized various items, as enumerated on the returns to each search warrant, copies of said inventories being appended to the respective motions of the defendants.

I. General Search:

Paragraph 3 of each motion to suppress attacks the search warrant itself, in particular, the command of said search warrant, and it is contended that the command of said search warrant fails to satisfy the requirements of particularity with regard to the items to be seized, as dictated by the Fourth Amendment and Rule 41(c), F.R.Cr. P.

Marron v. United States, 275 U.S. 192, 195, 48 S.Ct. 74, 75, 72 L.Ed. 231 sets forth the general authority upon which this principal of particularity or specificity is grounded: "The fourth Amendment declares that the right to be secure against unreasonable searches shall not be violated, and it further declares that 'no warrant shall issue, but upon probable cause supported by oath or affirmation, and particularly describing the place to be searched and the persons or things

to be seized.' General searches have long been deemed to violate fundamental rights. It is plain that the Amendment forbids them." This principle was more recently reenunciated in Berger v. New York, 388 U.S. 41, 58, 87 S. Ct. 1873, 1883, 18 L.Ed. 2d 1040; "The fourth Amendment's requirement that a warrant 'particularly describ/e/ the place to be searched, and the persons or things to be siezed, 'repudiated these general warrants and 'makes general searches . . . impossible and prevents the seizure of one thing under a warrant describing another. As to what is to be taken, nothing is left to the discretion of the officer executing the warrant.' Marron v. United States . . . /supra/; Stanford v. Texas, 379 U.S. 476, 481, 85 S.Ct. 506 509-510, 13 L. Ed. 2d 431." In accord are United States ex rel. Nickens v. LaVallee, 391 F. 2d 123, 126-127 (2d Cir.); People v. Baker, 23 N.Y. 2d 307, 319, 296 N.Y.S. 2d 745, 244 N.E. 2d 232; State v. Hawkins (Ore.) 463 P.2d 858; State v. Johnson, 160 Conn. 28, 273 A. 2d 702; State v. Allen, 155 Conn. 385, 391, 232 A. 2d 315; See also 74 Am. Jur. 524, Search and Seizure, Section 37; 4 Wharton Criminal Law and Procedure, Section 1555.

Property to be seized must be identified sufficiently to prevent "a mere roving commission." United States v. Quantity of Extracts, Bottles, etc., 54 F. 2d 643, 644 (S.D. Fla. 1931).

The Connecticut Supreme Court has struck down those portions of a number of search warrants in which the phrase "paraphernalia" is employed in the command of the warrant. In State v. Johnson, 160 Conn. 28, a warrant authorized a search for the seizure of "dynamite, blasting caps, guns, ammunition, and any other paraphernalia which could be used to violate Section 54-197 of

the Connecticut General Statutes." Section 54-197 was at that time the general conspiracy statute. During the course of a search pursuant to said warrant none of the items specifically named in the warrant were seized, however a book was taken, and it was claimed that the authority for this came within the purview of the language of the warrant pertaining to paraphernalia used as a means of committing the crime of conspiracy. The trial court denied a motion to suppress and upon conviction an appeal was taken, the Connecticut Supreme Court setting the judgment aside and ordering a new trial because of the defective search. In doing so that court stated "It is quite evident that a portion of a search warrant which authorizes the seizure of any 'paraphernalia which could be used to violate Section 54-197 of the Connecticut General Statutes' is, in that respect a general warrant. United States v. Marti, 421 F. 2d 1263 (2d Cir.). That phrase does not 'particularly' describe the 'things to be seized' but purports to authorize an officer executing the warrant to seize without limitation any item of personal property which could be used as the means of committing the crime of conspiracy." State v. Johnson, supra, 273 A. 2d 702, 705. The reference to State v. Johnson, supra, is particularly appropriate when considered in light of the language of the command of this warrant stating that the items claimed to be paraphernalia may have been used in the commission of a crime in violation of Title 18 United States Code Section 371, as well as Sections 1955 and 2. Section 371, as the Court is aware, is the general federal conspiracy statute. Thus, as in Johnson, the officers were given authority to search for any evidence that might suggest the existence of a conspiracy in a patently unlimited grant of authority.

It is submitted that the phrases "gambling records" and "wagering paraphernalia" fail to satisfy the particularity requirements as set forth above. This defect is highlighted by language appearing further in the command of the warrant, "including but not limited to . . ." . It cannot be seriously contended that such language does not leave, ultimately, to the discretion of the executing officers, the final determination as what is to be seized pursuant to the warrant, as these several phrases are not clearly defined by the magistrate. This clearly offends the rule set forth in Marron and the cases that have arisen under that doctrine.

An exception to the strict particularity rule of Marron has arisen in the Federal Courts, as illustrated by cases such as United States v. Robinson, 287 F. Supp. 245, 254-255 (N.D. Ind. 1968); United States v. One 1965 Buick, 392 F. 2d 672, 269-680 (6th Cir. 1968); United States v. Russo, 250 F. Supp. 55, 57 (E.D.Pa. 1966). In this circuit see United States v. Scharfman, 448 F. 2d 1352 (2d Cir. 1971); United States v. Dzialak, 441 F. 2d 212 (2d Cir. 1971) cert. denied, 404 U.S. 883; see also United State v. Baldwin, 46 F. R.D. 63 (S.D.N.Y. 1969); United States v. Pinero, 329 F. Supp. 992 (S.D.N.Y. 1971); United States v. Auterbridge, 375 F. Supp. 418 (S.D.N.Y. 1974). The general rule that runs through these cases is that in certain circumstances absolute presicion is not required in the identification of the items to be seized. The important caveat that must be drawn in the application of these cases, as an exception to the rigid rule of Marron v. United States, supra, is that

particularity is not rigidly required when the circumstances make an exact description of the items to be seized a virtual impossibility. In that situation the searching officer can only be expected to describe the generic class of items he is seeking. See also James v. United States, 416 F. 2d 467 (5th Cir. 1969), cert. denied, 397 U.S. 907. This exception is not without limitation, as stated in United States v. Melville, 309 F. Supp. 829, 832 (S.D.N.Y. 1971): "The question which a court is requried to consider is whether the items were sufficiently described so that an exercise of judgment in respect to the items seized may not be said to have been arbitrary."

The important distinction to be made with respect to this general line of cases, setting forth the exception, is that the bulk of these cases involved investigations prior to the enactment of 18 U.S.C. Sections 2510-2520, permitting the interception of wire communications. It is not stated in these cases that postdate the enactment of the wire tap provisions, whether electronic surveillance was available in those cases. Certainly, where there is extensive use of wire taps, as in the instant case, and in fact the bulk of the information contained in the affidavit of Agent Steinke is drawn from transcripts of that wire tap investigation, it cannot be said that the officers seeking the authority to seize evidence of the crimes they suspected did not have an opprotunity to know precisely what items would be present on the premises. Because of the peculiar and particular knowledge obtained as a result of the wire taps it is reasonable to demand that as to each place to be searched the

specific items thought to be present should have been specifically stated. There was no necessity for a general grant of authority, applying the same language for all searches conducted. It is submitted that because of the existence of this intimate knowledge of the purported gambling enterprise, gleaned from the wire taps, the exception to Marron may not be employed, and the rigid rule set forth therein must be applied. The bulk of the items specifically set forth in the warrant, as stated in paragraph 3b of all of the motions to suppress, are innocuous in nature and when considered in light of the reference to 18 U.S.C. Section 371, the command of the warrant pertaining to these items left to the executing officers untethered discretion as to what items they wished to seize.

II. Veracity of the Affidavit:

In paragraph 4a of each motion to suppress the court is asked to examine parts of the affidavit of Agent Steinke and relate the information contained therein, relating to intercepted wire communications, with the transcripts of those intercepted conversations. Two examples are given where by means not set forth in said affidavit, Agent Steinke has identified with certainty parties to those conversations. In considering this argument, further, the court should be mindful of the Government's most recent request that all named individuals in Docket No. H-298 and H-299 submit voice exemplars to aid the Government in the identification of voices for the trial of these indictments. The court is asked to examine in detail all of the conversations set forth in the

affidavit of Agent Steinke, and relate these conversations to the transcripts of the intercepted wire communications. The pattern is clearly established, as illustrated in paragraph 4a of the defendants' motion to suppress. There is nothing to allow a reasonable magistrate to conclude from an examination of those transcripts that, in fact, the individuals named in Steinke's affidavit were the parties to those conversations. Rather, the magistrate, apparently, accepted the statement of Agent Steinke contained within that affidavit as to the identity of these parties. It is submitted that the repeated statements of Agent Steinke in that affidavit identifying all the various parties to these conversations, and on the basis of that affidavit requesting the authority to search homes and business premises and apartments of these individuals, strongly suggest the type of falsehood or other imposition upon the issuing magistrate discussed in United States v. Culotta, 413 F. 2d 1343, 1345 (2d Cir. 1969), cert. denied, 396 U.S. 1019 and United States v. Dunnings, 425 F. 2d 836, 839-840 (2d Cir. 1969) cert. denied 397 U.S. 1002. As Judge Friendly noted in United State v. Dunnings, supra,: "We have intimated that circumstances might arise where a hearing with respect to the truth of a legally sufficient affidavit should be granted, but for reasons well indicated by Judge Frankel in United States v. Hallsey [257 F. Supp. 1002 (S.D.N.Y. 1966)] that should be done only where there has been an initial showing of falsehood or other imposition on the magistrate. The interposition of an 'independent judicial officers, whose decision, not that of the police, [will] govern whether liberty or privacy is to be invaded,' . . . goes a long way toward

accomplishing the objectives of the fourth Amendment." See also United States v. One 1965 Buick, 392 F. 2d 672, 678 (6th Cir. 1968); Cohen v. United States, 378 F.2d 751, 760 (9th Cir.) cert. denied, 389 U.S. 897; see cases collected in note, Testing the Factual Basis of a Search Warrant, 67 Column. L.Rev. 1529, 1530-1531, ns. 11-18 (1967). See also United States v. Pond, 382 F.Supp. 556 (S.D.N.Y. 1974). Based on the authority of the preceeding cases and the items set forth in paragraph 4a of the defendants' motion to suppress it is respectfully requested that a hearing be held allowing counsel to " beneath" the face of the affidavit and question the affiant as to the items contained therein.

III. Lack of Probable Cause:

Paragraph 4b of the motions to suppress contests the sufficiency of the affidavit of Agent Steinke, in that, much of what is related in the conversations seized pursuant to the wire tap is claimed to be a type of gamblers code, translated for the magistrate by Agent Steinke purportedly based on his experience, as set forth under the title "Sports Bookmaking" on pages 1, 2, 3 and 4 of this affidavit. It is submitted that this reliance on experience constitutes nothing more than speculation and conjecture on the part of the affiant. Nothing but his personal opinion is given to the issuing magistrate to support the conclusions he draws from the conversations set forth in the affidavit. An affidavit that merely states the affiants belief that there is cause to search without stating facts upon which that belief is based does not establish probable cause. Nathanson v. United States, 290 U.S. 41, 54 S. Ct. 11, 78 L.Ed. 159.

Proabable cause cannot be made out by affidavits which are purely conclusory, stating only the affiant's or an informer's belief that probable cause exists without detailing any of the underlying circumstances upon which that belief is based. Recital of some of the underlying circumstances in the affidavit is essential if the magistrate is to perform his detached function and not serve merely as a rubber stamp for the police. United States v. Ventresca, 380 U.S. 102, 108-109, 85 S. Ct. 741, 13 L.Ed. 2d 684; see Aguilar v. Texas, 378 U.S. 108, 109, 84 S. Ct. 1509, 12 L.Ed. 2d 723; Giordenello v. United States, 357 U.S. 480, 485-86, 78 Supreme Court 1245, 2 L.Ed. 2d 1503. As stated by Mr. Justice Jackson in Johnson v. United States, 333 U.S. 10, 13, 68 S. Ct. 367, 92 L. Ed. 436: "The point of the fourth Amendment, which often is not grasped by zealous officers, is not that it denies law enforcement the support of the usual inferences which reasonable men draw from evidence. Its protection consists in requiring that those inferences be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime." Because a magistrate is obviously relying solely on the belief of the officer seeking an arrest when he issues a warrant on the basis of an affidavit containing only conclusions, the fourth Amendment requires that an affidavit in support of a warrant contain enough information to support a magistrate's own judgment. This explains the following statement from the landmark case of Aguilar v. Texas, supra 114-15:

"The magistrate must be informed of some of the underlying circumstances . . . . Otherwise, 'the inferences from the facts which lead to the complaint' will be drawn not 'by a neutral and detached magistrate,' as the constitution requires, but instead by a police officer." State v. Jackson,' 162 Conn. 440, 444, 294 A. 2d 517.

It is next contended in the defendants' motion to suppress (paragraph 4c) that the information received from an informant is not to be credited since sufficient facts are not set forth to establish the reliability of said informant. Aguilar v. Texas, supra; Spinelli v. United States, supra. The court is asked to examine pages 5 and 6 of Agent Steinke's affidavit. On page 5, second paragraph, the reliability of the informant is attempted to be established by reference to the receipt of information on more than 200 occasions, purportedly corraborated. However, it should be noted that of the more than 200 tips received from this informant only 2 arrest warrants were issued and no convictions have been obtained.

The last issue raised in the motions of all defendants relates to the questions raised on the defendants' consolidated motion to suppress the fruits of the various wire taps employed in the investigation of the two indictments. It is simply contended that if the court sustains the contentions of the defendants that said wire taps constitute illegal searches and seizures, then on the authority of Wong Sun v. United States, 371 U.S. 471, the invalidity of the wire

interceptions fatality taints the affidavit of Agent Steinke.

IV. William Balog:

An additional ground is set forth in paragraph 5 of the motion to suppress pertaining to William Balog. The items named in paragraph 5 were seized without specific authority in the command of a search warrant pertaining to Balog, and do not constitute evidence of the crime set forth in said command. Further, no authority was given in said warrant to search the person of William Balog. Thus, the executing officers exceeded the scope of the authority granted to them under the warrant. See cases in Note, 79 AlR. 2d 1005. The seizure of these items particularly highlights the argument set forth in part I of this brief, that the grant of authority in the command of these warrants was so unspecific as to give the executing officers commission to seize whatever they desired, whether or not it was related to a purported gambling enterprise.

V. Richard Lanese:

The court is asked to examine paragraph 4c of the motion to suppress of the defendant Richard Lanese. Further example of the type of conversations referred to in Part I of this brief is set forth therein, in which the affiant claims to positively know the identity of the parties to the conversation.

At the time of the execution of the search and seizure warrant for the premises then occupied by the defendant Richard Lanese in Milford, Connecticut one of the executing officers, Connecticut State Trooper Donald Simmons, answered a phone call

incoming to the premises then being searched, at 3:11 p.m. Trooper Simmons attempted to deceive this caller into believing that he was Richard Lanese, however the caller had asked to speak to Dave. As a result of this deception by Trooper Simmons, Richard Lanese stated that he often used the name Dave when answering the phone. He had not, prior to this point, been advised that he had a right to remain silent. The effect of this admission is potentially damaging to the defendant, in that it is contended by the Government that a party identified as Dave on a number of the wire tap transcripts is in fact Richard Lanese. The defendant asks that this admission be suppressed under the authority of Miranda v. Arizona, 386 U.S. 436. Further, the defendant had not been informed of his right to counsel. Under the authority of Massiah v. United States, 377 U.S. 201, 205, McLeod v. Ohio, 378 U.S. 582, and McLeod v. Ohio, 381 U.S. 356 this defendant clearly had a right to have counsel present when he made a post-arrest statement in the nature of an admission. See State v. Darwin, 161 Conn. 413, 426. By its decision in the second McLeod case, supra, the United States Supreme Court made the rule laid down in Massiah v. United States, supra, applicable to statements volunteered by a defendant, without police solicitation, where there were no circumstances of trickery or subterfuge present. In the instant case, Trooper Simmons' attempt to intercept an incoming call may certainly be catorgorized as subterfuge or trickery. In fact, it is contended that no authority for the acceptance of this phone call was set forth in the command of the search warrant and

that the acceptance of this phone call constitutes an unlawful interception without prior judicial authority in contravention of 18 U.S.C. Sections 2510-2520. The actions of Trooper Simmons in answering that phone call prompted the defendant to make the admission, ignorant of his right to silence and his right to counsel. See Flaherty v. Ark., 415 U.S. 995 (Douglas, J., dissenting)

For the reasons set forth above, the defendants respectfully request that their motions to suppress be granted and the items seized, as enumerated in the various returns to those search warrants appended to each individual motion, be suppressed for use as evidence against them. It is further requested that those items of an innocuous nature be returned to the respective defendants.

THE DEFENDANTS

BY Richard T. Meehan
RICHARD T. MEEHAN
Their Attorney

This is to certify that a copy of the foregoing has been mailed to Peter R. Casey, Special Attorney, John Tarrant and to Peter Dorsey.

Richard T. Meehan
RICHARD T. MEEHAN
Attorney at Law
37036

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U.S. DISTRICT COURT
NEW HAVEN, CONN.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	
V.	:	CRIMINAL NO. H-298
WILLIAM BALOG, ET. AL.	:	
UNITED STATES OF AMERICA	:	
V.	:	CRIMINAL NO. H-299
ROGER SPINELLI, ET. AL.	:	

RESPONSE OF THE UNITED STATES TO DEFENDANTS' MOTION TO SUPPRESS INTERCEPTED WIRE COMMUNICATIONS

The defendants have moved, on three separate grounds, for the suppression of wiretap evidence which the government intends to introduce at trial. The United States, as will be seen, disagrees with the defendants' arguments and conclusions, and opposes the relief being sought.

ARGUMENTS

The Application And Order Are Not Insufficient On Their Face Where An Acting Assistant Attorney General Is Cited As The Authorizing Official But The Attorney General In Fact Made The Decision To Authorize Said Application

The defendants have moved to suppress wiretap evidence on the ground that authorization from an Acting Assistant Attorney General made the application and order "insufficient on their face" and that suppression of all evidence is required under Section 2518(10)(a)(ii) of Title 18, United States Code. The defendants look to United States v. Giordano, 416 U.S. 505 (1974) and United States v. Chavez, 416 U.S.

562 (1974) to provide support for their arguments. They blandly ignore, however, that lower federal courts have dealt with the precise situation that is present in this case. We can only assume that their absence is accounted for by the fact that these cases stand in direct contradiction to the position that the defendants ask the Court to take. See, United States v. Vigi, 515 F.2d 290 (6th Cir. 1975); United States v. Acon, 513 F.2d 513 (3d Cir. 1975); United States v. Robertson, 504 F.2d 289 (5th Cir. 1974).

The government, in this case, has previously submitted to the Court the affidavit of former Attorney General John Mitchell stating that he personally approved the request for authority to apply for an order authorizing these electronic interceptions. The government has submitted the affidavit of Mr. Mitchell's Executive Assistant, Sol Lindenbaum, stating that the Attorney General had personally acted in this matter. The government has also submitted the affidavit of Henry E. Petersen, former Assistant Attorney General in charge of the Criminal Division of the United States Department of Justice, stating that he authorized Attorney John R. Tarrant to proceed only after receiving approval from the Attorney General's office.

In United States v. Acon, supra, the Court was faced with the same facts as in this case. The Court stated:

> "[W]e are not dealing with an authorization by an acting assistant attorney general. We are dealing with a signature on the authorization order placed there by an unqualified person . . . . Giordano and Chavez recognize that suppression is not required for every technical violation. Only 'where there is failure to satisfy any of those statutory requirements that directly and substantially implement the congressional intention to limit the use of intercept procedures', Giordano, 416 U.S. at 527, 945 Ct. at 1832, is suppression required under 2518(10)(a)(i) . . . . There is a distinction in the kinds of information which must be supplied to the approving judge. Clearly, the name of the authorizing officer is less

> important than statements of fact which must be submitted under §2518(1)(b). Unless the judge is properly apprised of the facts, he cannot make an appropriate probable cause determination as required by §2518(3). In contrast, the name of the authorizing officer is not as likely to affect the judge's determination that a wiretap is or is not warranted. . . . We perceive a distinction between information which the government may vary by subsequent affidavit and information which must stand on the four corners of the affidavit. Based on this difference, we conclude that suppression is not required for facial insufficiency relating to less critical requirements which may be varied by subsequent affidavits. The identification directives in our opinion fall within this category . . . . In this case we believe the facial insufficiency was technical for two reasons. Mitchell had actually approved the wiretap so that there was substantial compliance with the statute. Only the less crucial identification requirements were actually breached." United States v. Acon, supra, at 516-519 (emphasis in original).*

In United States v. Robertson, supra, the Fifth Circuit also dealt with the same question. The Court relied upon the Chavez decision to find that suppression of evidence was not warranted on the grounds that Henry Petersen was only an Acting Assistant Attorney General. The Court found that the Attorney General had personally authorized the application, and went on to say:

> "Certainly the congressional intent is satisfied when the head of the Justice Department personally reviews the proposed application and determines that the situation is appropriate for employing this extraordinary investigative measure." United States v. Robertson, supra, at 292.

The Sixth Circuit has also found that the Chavez decision controls the disposition of this issue. In United States v. Vigi, supra, the Court explained that an affidavit of John Mitchell was before the Court which stated that he had personally considered and approved the

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*It is of interest to note that the Acon wiretaps were instituted on December 9, 1971 and December 23, 1971, and that the wiretaps in this case were instituted on December 16, 1971.

with respect to [illegible] the identification of the
[illegible] Attorney, Attorney General as the authorizing official was a
[illegible] sufficiency which is not [illegible] suppression. United
States [illegible] Young, at [illegible] it would also be noted that all of
the [illegible] other wise have been [illegible]
[illegible] United States v. Bacon,
[illegible] 1975), would be
[illegible] Furthermore, it is important to note
[illegible] the basis of
[illegible] United States v.
[illegible] 508 F.2d 567
[illegible] 495 (9th Cir. 1975),
[illegible] 1200 (9th Cir. 1975), cert. denied,
[illegible] 494 F.2d 1207 (D.C.Cir. 1974);
[illegible] 525 (N.D.Cal. 1974); In Re Alperen,
[illegible] 476 F.2d 547 (1st Cir. 1973);
[illegible] (E.D.Pa. 1972).

[illegible] Court, based on the
[illegible] cases cited herein, that suppression
[illegible] defendants' motion on this ground must
[illegible] the Court to adopt this view and uphold
[illegible] and the [illegible] stemming

I.

The [illegible] Indicated
[illegible] that Means
[illegible] Title [illegible]

[illegible] stated that the confidential sources
[illegible] the [illegible] operation [illegible] named individuals

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had refused to testify, and would continue to refuse even if granted immunity. He recited the physical conditions which made surveillance of the suspects difficult if not impossible. He stated that no other witnesses to the suspected offenses were known. He also stated that based on past experiences gambling raids and searches would not be productive for several stated reasons.

The defendants offer as grounds for suppression the case of United States v. Kalustian, 9th Cir., Aug. 4, 1975, 17 Cr. L. 2418; modified, Dec. 11, 1975, 18 Cr.L. 2411, with the mere advisement that they consider the affidavit in this case to be "substantively identical". They offer no enlightenment as to particulars or what logical alternative methods might have been employed in this case: See, United States v. Steinburg, 525 F.2d 1126, 1130 (2d Cir. 1975). Furthermore, the United States does not agree with the conclusions reached by the Ninth Circuit. Although the Court recognized that Congress did not require exhaustion of "all possible" investigative techniques, they glossed over the fact that paragraphs (1)(c) and (3)(c) of Section 2518 are written in the disjunctive, and that other methods must only "reasonably appear to be unlikely to succeed". The agent in Kalustian drew largely on his and other agents experience, but the Court apparently felt this was too "conclusory". Yet his conclusions were, we believe, an accurate representation of the actual methods used by gamblers to frustrate law enforcement efforts. How does one go about proving a negative without actually trying the questioned methods, which would, in turn, surely give away the game? The Court also gave emphasis to the fact that state authorities were successful in prosecuting gambling cases without resorting to electronic surveillance. The opinion totally ignores, however, the fact that the federal anti-gambling statute, 18 United States Code, Section 1955, requires more than just catching a gambler

in the act of accepting wagers (See attachment). The federal statute requires proof that the operation involves five or more individuals, in designated capacities, which has been in substantially continuous operation for a period in excess of thirty days or has a gross revenue of $2,000 in any single day. Certainly without these restrictions the federal government could also use more conventional tactics to make gambling cases. That is not reality, however, for the government must work within the parameters of the statute. These types of gambling operations are, in fact, "tough to crack", which Congress obviously foresaw by including Section 1955 as one of the statates for which electronic surveillance could be utilized. See, 18 United States Code, Section 2516.

The Second Circuit has adopted a more realistic view of the problem. In United States v. Steinberg, supra, the Court had before it an affidavit containing fewer "facts" than in this case or Kalustian. The Court stated the following:

> "Although the affidavit provides little factual basis for concluding that normal investigative techniques had not 'suffice[d] to expose the crime, . . . , paragraphs (1)(c) and (3)(c) of §2518 are in the disjunctive; and the Government's main reliance is upon the second alternative provided by the statute. We must view the affidavit as a whole and 'in a practical and commonsense fashion', . . . While the Government will be well advised in the future to include a more detailed factual statement indicating the inadequacy of other investigative techniques, the affidavit herein did contain enough data to permit the authorizing judge reasonably to conclude that other means would be unlikely to succeed in revealing the scope of Steinberg's operation and his sources of supply.
>
> When one endeavors to prove a negative, it is difficult to be very specific about it; and we are loathe to set impossibly burdensome standards . . . We are satisfied that the Government has substantially complied with the statutory mandate, and note that on oral argument appellants could advance no logical alternative to wiretapping . . . Indeed, wiretapping is

particularly appropriate when the telephone is routinely relied on to conduct the criminal enterprise under investigation." Supra, at 1130 (citations omitted; emphasis added). See also, United States v. Schwartz, Slip Op., 2nd Cir., April 20, 1976, Docket No. 75-1364, at 3281-3282.

In this case, the informant information contained in the affidavit clearly indicated that telephones were the primary tool used in the operation of an extensive, well organized gambling business. The informant information also indicates that persons seeking to join the operation were checked out beforehand, thereby suggesting that attempts at undercover infiltration could well prove fruitless (Aff., p. 4). Agent Steinke also pointed out the unavailability of witnesses and the physical difficulties of surveillance as well as the problems inherent in raids and searches which could reasonably be expected to be ineffective in unearthing the entire scope of the operation. We therefore submit that there was sufficient data before the authorizing judge to allow him to reasonably conclude that other investigative means would be unlikely to succeed.

III.

Suppression Is Not Warranted Where The Statute Provides For Separate And Distinct Civil Proceeding And Remedy On The Question Of Improper Disclosure Of Intercepted Communications

The Third Circuit Court of Appeals has found that audit agents of the Internal Revenue Service are investigative or law enforcement officers within the meaning of Sections 2510(7) and 2517 of Title 18, United States Code. See, United States v. Iannelli, 477 F.2d 999, 1001 (3d Cir. 1973), aff'd, 420 U.S. 770 (1975). This Court need not reach the question, however, since the defendants seek an improper remedy.

In the context of this criminal case, even if the disclosure was improper as claimed, suppression of the wiretap evidence would not

be warranted. The District Court in Iannelli was faced with this precise situation and stated:

> "Section 2515 provides that the contents of interceptions may not be received in evidence if disclosure '. . . would be in violation of this chapter'. Section 2518(10)(a) provides for suppression when (i) the communication was unlawfully intercepted, (ii) the order is insufficient on its face, or (iii) the interception was not made in conformity with the order. Subsequent illegal activity is not listed within these categories.
>
> If it be assumed that the interception initially was lawful, then the use of the evidence in this criminal case would not be 'in violation of this chapter'.
>
> We do not believe that it was the Congressional intent to avoid an interception ab initis if there were some unauthorized disclosure of the information at some later time after an original lawful acquisition of evidence for use in the criminal proceeding which was the basis for the court order in the first instance." United States v. Iannelli, 339 F.Supp. 171, 175 (W.D.Pa. 1972), aff'd 477 F.2d 999 (3d Cir. 1973), aff'd 420 U.S. 770 (1975).

The Court then went on to add that:

> "[a] ruling on the admissibility of evidence forming part of an unauthorized disclosure, if such were sought to be utilized in a tax collection suit, should of course be differed until raised in that proceeding. It is pertinent also that Congress did provide for the recovery of civil damages for the disclosure, use, or procurement of communications in violation of this chapter. See, §2520." Supra.

Thus, the United States feels that, regardless of the propriety of the questioned disclosure, the defendants' motion, as it relates to this criminal action, is without merit.

CONCLUSION

Based on the above reasoning and cited authority, the United States respectfully requests that the defendants' Motion to Suppress be denied.

UNITED STATES OF AMERICA

PETER C. DORSEY
United States Attorney

BY: Peter R. Casey III
PETER R. CASEY, III
Special Attorney
U.S. Department of Justice

CERTIFICATION

This is to certify that copies of the foregoing Response and attachements have been mailed, postage prepaid, this 29th day of April, 1976 at Hartford, Connecticut to all counsel of record in United States v. William Balog, et. al., Criminal No. H-298 and United States v. Roger Spinelli, et. al., Criminal No. H-299.

Peter R. Casey III
PETER R. CASEY, III
Special Attorney
U.S. Department of Justice

CERTIFICATION

CALIFORNIA CODE

Felony defined, see § 17.
Fine authorized in addition to prescribed imprisonment, see § 672.
Minimum felony punishment, see §§ 18a, 18b.
Refusal to arrest or receive person charged with offense, punishment of officer, see § 142.
Removal of officers for misconduct, see Government Code § 3060 et seq.
Removal of public officers for violation or neglect of official duty, see § 661.

Law Review Commentaries

Gamblers' Occupational Tax Act, validity of. (1952) 26 So.Cal.L.R. 208.

Library References

Bribery ⇐1-8. C.J.S. Bribery §§ 1-8.

Notes of Decisions

1. In general

More granting of a permit under city ordinance authorizing issuance of permits for conduct of games of skill and science would not authorize conduct of an illegal game. Brown v. Board of Police Com'rs of City of Los Angeles (1943) 136 P.2d 617, 58 C.A.2d 473.

Under city ordinance providing for granting of licenses for operation of games of skill to one of good moral character providing maintenance of such game will comport with public welfare, it is mandatory that an application for license be denied, though the game be one of skill, if the dominating factor is chance, but, if sufficient facts are presented on the application a finding must be made as to the character of the game. Id.

Provisions of §§ 315-318, 330, 337a, and this section prohibiting gambling houses and houses of prostitution must be construed together. Ex parte Chase (1931) 6 P.2d 577, 119 C.A. 432.

The occupation of any enclosure for the purpose of distributing "Caliente Handicapping Cash Pool" forms is in violation of gambling laws, § 321 and this section, and such forms are subject to seizure and destruction pursuant to § 335. 51 Ops.Atty. Gen. 145, 7-23-68.

§ 337a. Bookmaking or pool-selling; keeping or occupying place with paraphernalia for recording wagers, etc.; stake holding; recording wagers; permitting unlawful use of room or enclosure; making or accepting wagers; punishment; application of section

Every person,

1. Who engages in pool-selling or bookmaking, with or without writing, at any time or place; or

2. Who, whether for gain, hire, reward, or gratuitously, or otherwise, keeps or occupies, for any period of time whatsoever, any room, shed, tenement, tent, booth, building, float, vessel, place, stand or enclosure, of any kind, or any part thereof, with a book or books, paper or papers, apparatus, device or paraphernalia, for the purpose of recording or registering any bet or bets, or any purported bet or bets, or wager or wagers, or any purported wager or wagers, or of selling pools, or purported pools, upon the result, or purported result, of any trial, or purported trial, or contest, or purported contest, of skill, speed or power of endurance of man or beast, or between men, beasts, or mechanical apparatus, or upon the result, or purported result, of any lot, chance, casualty, unknown or contingent event whatsoever; or

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3. Who, whether for gain, hire, reward, or gratuitously, or otherwise, receives, holds, or forwards, or purports or pretends to receive, hold, or forward, in any manner whatsoever, any money, thing or consideration of value, or the equivalent or memorandum thereof, staked, pledged, bet or wagered, or to be staked, pledged, bet or wagered, or offered for the purpose of being staked, pledged, bet or wagered, upon the result, or purported result, of any trial, or purported trial, or contest, or purported contest, of skill, speed or power of endurance of man or beast, or between men, beasts, or mechanical apparatus, or upon the result, or purported result, of any lot, chance, casualty, unknown or contingent event whatsoever; or

4. Who, whether for gain, hire, reward, or gratuitously, or otherwise, at any time or place, records, or registers any bet or bets, wager or wagers, upon the result, or purported result, of any trial, or purported trial, or contest, or purported contest, of skill, speed or power of endurance of man or beast, or between men, beasts, or mechanical apparatus, or upon the result, or purported result, of any lot, chance, casualty, unknown or contingent event whatsoever; or

5. Who, being the owner, lessee or occupant of any room, shed, tenement, tent, booth, building, float, vessel, place, stand, enclosure or grounds, or any part thereof, whether for gain, hire, reward, or gratuitously, or otherwise, permits the same to be used or occupied for any purpose, or in any manner prohibited by subdivisions one, two, three or four of this section; or

6. Who lays, makes, offers or accepts any bet or bets, or wager or wagers, upon the result, or purported result, of any trial, or purported trial, or contest, or purported contest, of skill, speed or power of endurance of man or beast, or between men, beasts, or mechanical apparatus, is punishable by imprisonment in the county jail for a period of not more than one year or in the state prison for a period not exceeding two years.

This section shall apply not only to persons who may commit any of the acts designated in subdivisions one to six inclusive of this section, as a business or occupation, but shall also apply to every person or persons who may do in a single instance any one of the acts specified in said subdivisions one to six inclusive.

(Added by Stats.1909, c. 28, p. 21, § 1. Amended by Stats.1911, c. 7, p. 4, § 1; Stats.1968, c. 578, p. 1246, § 1.)

Historical Note

As added in 1909, the section read: "Every person, who engages in pool selling or bookmaking at any time or place; or who keeps or occupies any room, shed, tenement, tent, booth, or building, float or vessel, or any part thereof, or who occupies any place or stand of any kind, upon any public or private grounds within this state, with books, papers, apparatus or paraphernalia, for the purpose of recording or registering bets or wagers, or of selling pools, or who records or registers bets or wagers, or sells pools, upon the result of any trial or contest of skill, speed or power of endurance, of man or beast or between men or beasts, or upon the result of any lot, chance, casualty, unknown or contingent event whatsoever; or who receives registers, records or forwards, or purports or pretends to receive, register, record or for-

defense, counsel for the

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UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

DISTRICT COURT
NEW HAVEN, CONN.

UNITED STATES OF AMERICA	:	
v.	:	CRIMINAL NO. H-298
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ROGER L. SPINELLI, ET AL	:	

DEFENDANTS' REPLY BRIEF
ON MOTION TO SUPPRESS

The Defendants have previously argued that the application and interception order are "insufficient on their face" and that the contents of any intercepted wire communications, and evidence derived therefrom, must be suppressed pursuant to 18 USC §§2518 (10) (a) (ii) and 2515. That argument is actually comprised of two sub-arguments. First, if an application recites that such application is authorized by an Acting Assistant Attorney General, even though it was actually approved and authorized by the Attorney General, under 18 USC §§2518 (10) (a) (ii) suppression must be granted. The Defendants concede that there are decisions to the contrary. United States v. Vigi, 515 F2d 290 (6th Cir. 1975); United States v. Acon, 513 F2d 513 (3rd Cir. 1975).[1]

Second, if an application recites that such application is authorized by an Acting Assistant Attorney General, and in fact it was approved and authorized by him, then unquestionably under 18 USC §§2518 (10) (a) (ii) suppression must be granted.

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1. The government also relies on United States v. Robertson, 504 F2d 289 (5th Cir. 1974). However, the Robertson court did not consider the issue of "facial insufficiency".

> "Relying solely on Chavez, the Fifth Circuit has held on identical facts [as in Acon] that suppression is not required. United States v. Robertson ... The court in Robertson considered only the issue of misidentification as a suppression ground under (10) (a) (i). Suppression for facial insufficiency under (10) (a) (ii) was not raised in that opinion."
>
> United States v. Acon, supra, footnote 11, at page 517

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In Acon, at page 516, the court specifically held that "an acting assistant attorney general who has not been appointed by the President and confirmed by the Senate, may not be designated specially to authorized wiretaps under §2516 (1)." See also United States v. Narducci, 341 F Supp. 1107; aff'd , 500 F2d 1401 (3rd Cir. 1974). Further, United States v. Robertson, supra, is not authority to the contrary, as suggested by the government, in that it never considered this issue and, so stated, at page 293:

> 'Having determined that the authorization in this case was actually approved by the Attorney General, we do not reach the question of the authority of any acting assistant attorney general to give such approval."

In United States v. Boone, 348 F Supp. 168, 170 (Ed. Va 1972) the court held,

> "There is no provision in the law for an Acting Assistant Attorney General to authorize application for orders of electronic wiretapping. It is patently obvious that Acting Assistant Attorney Generals are not within that limited group whom Congress determined appropriate to make a decision which strikes at such a basic Constitutional right as to be free from unreasonable search and seizure in order to maintain the right of privacy."

In 1974 that decision was "reversed" by the Fourth Circuit at 499 F2d 551, in a per curiam decision that held, in its entirety:

> "The issues presented by these appeals were specifically resolved adversely to the Defendants' position by the Supreme Court in United States v. Giordano et al., 416 U.S. 505, 94 S. Ct. 1820, 40 L. Ed 2d 341 (1974) and United States v. Chavez, et al., 416 U.S. 562 94 S. Ct. 1849, 40 L. Ed 2d 380 (1974). The orders of the district court 348 F Supp. 168 granting the Defendants' motions to suppress are, therefore, reversed and the cases are remanded for further proceedings."

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With due deference to the Fourth Circuit, we respectfully submit that the panel in Boone misunderstood the legal proposition for which Chavez and Giordano stand, as a consequence of which its decision has gone astray.

In considering wherein this opinion is fallacious, for the reasons already advanced in the Defendants' brief, we submit that Chavez and Giordano support suppression in this case. Under no concept whatever is either case authority for the principle that the contents of intercepted wire communications, and evidence derived therefrom, shall not be suppressed under §§2518 (10) (a) (ii) and 2515 even though the application and interception order recite that the authorizing official is an Acting Assistant Attorney General and he in fact was the authorizing official.

It is deemed unfortunate that in Boone the Fourth Circuit did not give the particular reasons upon which it formulated its conclusion that Chavez and Giordano resolved the issues considered on that appeal. After reading the opinion, except for the decisional law mentioned, one is unable to ascertain any reason on which the Court's conclusions were founded. From a scholarly standpoint, it is impossible to ascertain any legal principle for which that opinion stands, and for which it may be cited.

The government's response to the Defendants' "Acting Assistant Attorney General" argument is predicated upon the assumption that the authorizing official was in fact the Attorney General, and not the Acting Assistant Attorney General. Such was the case in United States v. Acon, supra, and therein the court accordingly stated, at page 516:

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> "In the instant case ... we are not dealing with an authorization by an acting assistant attorney general. We are dealing with a signature on the authorization order placed there by an unqualified person."

In the subject case, the Defendants strenuously suggest that we are dealing with an authorization by an acting assistant attorney general. Referring to the Statement of Facts beginning at page 2 of the Defendants' brief, it is clear that the application, the authorization attached as Exhibit A thereto, the Attorney General's Memorandum letter dated December 15, 1971, and the court order all specifically and unambiguously indicate that the authorizing official was the Acting Assistant Attorney General, Henry Petersen.

In Defendant Roger L. Spinelli's motion for production and discovery the government was asked, in paragraph 30, to identify all persons who authorized the interception herein. The question obviously was asked so as there could be no misunderstanding as to who actually was the "authorizing official" herein. The government's answer, dated August 21, 1972, to such request was that "the government takes the position that the order and underlying application speak for themselves." (emphasis added)

Repeating what is already stated on page 4 of Defendants' brief, the Defendants agree that the application, letter, order and memorandum above referred to speak for themselves and it is clear that Henry E. Petersen, Acting Assistant Attorney General, was the authorizing official.

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However, l o and behold, the government on page 2 of its brief, argues, in effect, that the order and underlying application do not, in fact, speak for themselves and it thereupon relies upon certain affidavits filed with the court to establish that the Attorney General, and not the Acting Assistant Attorney General, was the authorizing official herein.

In the event that the court tole ates the government's repudiation of its discovery response by considering the affidavits, the Defendants will thereupon move for an evidentiary hearing on the factual issue of who was the "authorizing official". The Defendants have repeatedly been assured by this court that the Defendants would have an opportunity for an evidentiary hearing and the Defendants refuse to rely on affidavits as opposed to live testimony. Due process and the fundamental right of cross-examination would require it. Of important note is that former Attorney General Mitchell was convicted of conspiring to obstruct justice. We make this point because the same government that prosecuted Mitchell in Washington, D. C., is suggesting that the court and the Defendants rely on the bland Mitchell affidavit offered in this case. Again, we respectfully decline to do so.

Attached hereto, as Exhibit D, is a memorandum dated November 6, 1974, from Thomas D. Decker, Deputy Director of the Federal Defender Program for the United States District Court for the Northern District of Illinois. The court is respectfully requested to examine such Exhibit to observe the inherent danger of relying on affidavits in this type case.

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II

In their brief, the Defendants offered as grounds for suppression the case of United States v. Kalustian, 9th Cir., Aug. 4, 1975, 17 Cr. L. 2428, modified, Dec. 11, 1975, 18 Cr. L. 2411, on the basis that the affidavit in that case was "substantially identical" to the affidavit herein. The relevant portion of the affidavit herein was attached to the Defendants' brief as Exhibit A. Attached to this reply brief as Exhibit C is the affidavit which was in issue in Kalustian. The court is respectfully requested to compare the two affidavits, both of which speak for themselves. Also attached hereto as Exhibit E is the full text of the Kalustian decision, together with the amendment.

Title 18 U.S.C. §2518 includes among the requirements for a valid application for order authorizing the interception of a wire communication that it contain:

> "(1)...(c) A full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous."

The purpose of this language is to "assure that wire tapping is not resorted to in situations where traditional investigative techniques would suffice to expose the crime." United States v. Kahn, U.S. , 94 S.Ct. 977, 983 (1974), footnote 12. Although the United States Supreme Court has not given direct consideration to the sufficiency of applications alleging unlikely success of other investigative techniques (see United States v. Chavez, 416 U.S. 562, 94 S.Ct. 1849, 1853 (1974), footnote 3), the Court has summarized the importance of these requirements in United States v.

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Giordano, 416 U.S. 505, 94 S.Ct. 1820, 1826-1827 (1974):

> "Congress legislated in considerable detail in providing for applications and orders authorizing wiretapping and evinced a clear intent to make doubly sure that the statutory authority be used with restraint and only where circumstances warrant the surreptitious interception of wire and oral communications. These procedures were not to be routinely employed as the initial step in criminal investigation. Rather, the applicant must state and the court must find that normal investigative procedures have been tried and failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous. (Citation omitted). The Act plainly calls for the prior, informed judgment of enforcement officers desiring court approval for intercept authority, and investigative personnel may not themselves ask a judge for authority to wiretap or eavesdrop. The mature judgment of a particular, responsible Department of Justice official is interposed as a critical precondition to any judicial order." (Emphasis added)

An initial difficulty which appears in the applications in the present case is that the Department of Justice official making the application has merely reiterated a conclusion that normal investigative techniques are unlikely to succeed. Thus, the informed judgment of a mature responsible Department of Justice official has not been maintained, but he has rather merely pro forma relied upon representations made in the affidavit of the investigative officer. The language of United States v. Giordano, supra, would indicate that this failure to make an independent determination on the part of the Justice Department official vitiates the warrant.

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A further serious defect appears with regard to the allegations made in the affidavit in support of the wiretap applications. Basically, these allegations state that the affiant's experience indicates that bookmaking cases are very difficult to prove through "normal investigative techniques." Significantly, the allegations do not maintain that these procedures would be insufficient in the present case, but only in this kind of case. As such, the statements are totally insufficient to meet the requirements of the wiretap statute. As indicated in United States v. Giordano, supra, the wiretap is not to be used as the initial step in the investigation. Moreover, the statute does not include a blanket permission to evade the normal investigative technique requirements in bookmaking or any other particular kind of case. In fact, each of the areas in which wiretapping is authorized could conceivably be an area in which normal investigative techniques would usually fail.

The government has ignored the fact that Title 18 U.S.C. §2516 details that wiretap authorizations may be utilized with regard to only particular alleged criminal activity. The legislative history and debates with regard to the wire interception statute relies primarily upon the difficulty of obtaining evidence in the cases listed in section 2516. Thus, the kind of case is the reason for allowing wiretap at all. Clearly, the requirement in section 2518 (1) (c) must encompass more than mere reliance upon the kind of case and must, therefore, intend that the investigating officer detail specific facts with regard to the individuals under consideration. Otherwise, the "full and complete statement" language becomes meaningless in light of the legislative history under section 2516.

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The situation involved here is akin to a problem which has been confronted by the federal judiciary with respect to "knock and notice" requirements prior to entry into a dwelling in order to effectuate an arrest or a search pursuant to a warrant.

The federal courts have expressed an insistence that the knock and notice requirements not be circumvented through reliance upon experience with similar kinds of cases. In United States v. Likas, 448 F.2d 607 (7th Cir. 1971), the Court considered a situation in which federal agents, armed with a search warrant which sought, among other things, the seizure of "flash paper", determined that based upon their previous experience in attempting to seize such items, compliance with the knock and notice provisions of Title 18 U.S.C. §3109 was not required. The government urged that the possibility that the "flash paper would be destroyed immediately following any announcement of purpose authorized the officers' unannounced intrusion". The court noted "it is our opinion, however, that the government's position is incorrect ..." 448 F.2d 607, 609. The court went on to note:

> "The possible destruction of evidence in this situation is insufficient to condone the officers' actions, which are in clear derrogation of the strictures of section 3109. In Miller v. United States, 357 U.S. 301, 313, 78 S.Ct. 1190, ... the Court stated:
>
> 'We are duly mindful of the reliance that society must place for achieving law and order upon the enforcing agencies of the criminal law. But insistence on observance by law officers of traditional fair procedural requirements is, from the long point of view, best calculated to contribute to that end. However much in a particular case insistence upon such rules may appear as a technicality that inures to the benefit of the guilty person,

> the history of the criminal law proves that tolerance of short-cut methods in law enforcement impairs its enduring effectiveness.' "

United States v. Likas, supra, 448 F. 2d at 609

Similarly, in the present situation, merely relying upon the difficulty of investigative techniques with regard to bookmaking cases is insufficient. The statute mandates that the officers only use the wiretap authorization as a last resort. The failure to follow that requirement here renders the seizure of the communications illegal. To hold otherwise would permit the circumventing of these requirements in any book making case, which is clearly not the law.

United States v. Steinberg, 525 F. 2d 1126, 1130 (2nd Cir. 1975) reaffirms the requirement imposed by 18 USC §2518 (1) (c) and 3 (c) that the affidavit must contain enough data to permit the authorizing judge reasonably to conclude that other means would be unlikely to succeed.

Herein, there was no data whatsoever on why the use of undercover agents either as "bettors", "runners", "layoff-men", or "telephone-books", would be unlikely to succeed. As a matter of fact, on page 4 of Agent Steinke's affidavit, he specifically admits that in fact the target defendant, Nicholas V. Lanese, was actually recruiting people to help him with the operation.

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"Source Number Two advised that in August of 1971, NICHOLAS V. LANESE told him that he, LANESE, had thirty people working for him in his bookmaking operation and wanted more for the upcoming football season. According to this source, LANESE stated that he preferred people who have no criminal record and divides the proceeds of his operation by keeping three-quarters for himself and giving one-quarter to his workers. LANESE explained to this source that if a person agrees to work for him as a telephone book, he must furnish LANESE with a reference, which is checked out, and put up a certain amount of capital in order to protect LANESE from serious financial loss."

Undoubtedly, either undercover "bettors", "runners", "layoff men" or "telephone-books" could easily establish the gambling operation, the continuity of the operation, and that the gross revenue exceeded $2,000 in any single day. Either "runners", "layoff men" or "telephone-books" could easily establish that the operation involved five or more individuals (the affidavit states there were in excess of thirty) and their respective designated capacities. The authorizing judge was never advised why under cover agents could not become "bettors", "runners", "layoff men" or "telephone-books". From the affidavit it appeared that the government's informants were able to provide the government with sufficient information to obtain a conviction. Why were not undercover agents gradually allowed to infiltrate the gambling operation, after establishing Bridgeport identities?

The government argues that the isolated statement in the affidavit that new workers would be "checked-out" s u g g e s t s" that attempts at undercover infiltration could well prove fruitless. (Government's Response, page 7). Nonsense! No data was provided to the authorizing judge to allow

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him to determine the difficulty, to the government, if any, in establishing the undercover identities which would be "checked out" by LANESE. At least in Steinberg, a narcotics case, it was stated in the affidavit, after describing the narcotics operation, that "there is no known undercover access to his supplier and no chance of developing such access because of the covert manner in which Stuart L. Steinberg operates" and that "such dealers very rarely keep records, deal personally with a very few trusted individuals and isolate themselves from other individuals in the distribution organization." U. S. v. Steinberg, CA 2, 11/10/75, 18 Cr.L. 2410.

It is respectfully submitted that there was not sufficient data before the authorizing judge to allow him to reasonably conclude that other investigative means would be unlikely to succeed in this case, as opposed to this kind of case. Further, there was no data before the authorizing judge to allow him to reasonably conclude that the use of undercover agents would be unlikely to succeed.

For the reasons stated herein and in their brief already filed, the Defendants respectfully request that their Motion to Suppress be granted.

Respectfully submitted,

THE DEFENDANTS

BY Sigmund L. Miller

SIGMUND L. MILLER
SIGMUND L. MILLER, P.C.
Attorney for the Defendant, Roger L. Spinelli

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CERTIFICATION

This is to certify that a copy of the foregoing has been sent this 6th day of May, 1976, to the following:

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FILED
JUN 8 8 13 AM '76
U.S. DISTRICT COURT
NEW HAVEN, CONN.

UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF CONNECTICUT

MICROFILM
JUL 21 1976
BRIDGEPORT

UNITED STATES

VS

WILLIAM R. BALOG

UNITED STATES

VS

NICHOLAS LANESE

CRIMINAL NO. H-298

UNITED STATES

VS

RICHARD LANESE

7/19/76
absent objection, the motion is granted
RCZ
USDJ

MOTION FOR
SUPPLEMENTAL DISCOVERY

The defendants hereby move for a further order of discovery in the above-captioned matter. Pursuant to a Court order, the defendants have appeared at the office of the Federal Bureau of Investigation in Bridgeport and given voice exemplars. It was represented by the Attorney for the Government that said exemplars would be submitted to an agent of the Federal Bureau of Investigation for him to make a comparative analysis with tapes of the wire tap involved in the investigation preceeding this indictment, to determine the identity of the parties to conversations intercepted pursuant to said wire tap. In order to properly prepare a

defense, counsel for the defendants hereby request an order from the Court directing the attorney for the Government to provide to counsel or his agents the following:

1. State the name or names of any person or persons to whom the Government has submitted said voice exemplars for the purpose of comparative analysis, as set forth above.

2. State whether such person or persons are claimed by the Government to possess expertise in the field of voice identification.

3. As to each person named pursuant to paragraph 1 above, state the training, qualifications and experience in the field of voice identification.

4. Provide defense counsel with copies of any reports from said persons, or any other expert or individual pertaining to the examination and comparison of said voice exemplars to the tapes of intercepted wire communications.

5. State the name and model number of the recording devices employed in taking the voice exemplars.

6. State the make and model number of the tapes employed in taking the voice exemplars.

7. State whether said tapes had been used on any other occasion.

WHEREFORE, the defendants pray that the information is necessary to enable them to adequately prepare their defense and that this request is reasonable.

THE DEFENDANTS

BY Richard T. Meehan
RICHARD T. MEEHAN
Their Attorney

O R D E R

After hearing upon the foregoing Motion, it is hereby

GRANTED . . DENIED.

THE COURT

BY_____, J.

This is to certify that a copy of the foregoing has been mailed, postage prepaid, to the U.S. Attorney at New Haven, Peter Casey, Esq. and John Tarrant, Esq.

Richard T. Meehan

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FILED
JUN 8 8 21 AM '76
U.S. DISTRICT COURT
NEW HAVEN, CONN.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	
V.	:	CRIMINAL NO. H-298
WILLIAM BALOG, ET. AL.	:	
UNITED STATES OF AMERICA	:	
V.	:	CRIMINAL NO. H-299
ROGER SPINELLI, ET. AL.	:	

RESPONSE OF THE UNITED STATES TO
'ENDANTS' MOTION TO SUPPRESS PHYSICAL EVIDENCE

BACKGROUND

On December 16, 1971, upon application by Special Attorney John F. Tarrant, United States District Judge M. Joseph Blumenfeld authorized the interception of wire communications to and from telephone number 372-5434 located at 3850 Main Street, Apartment 46, Bridgeport, Connecticut, and telephone numbers 333-1224 and 336-5976 located at 215 Barnum Avenue, Apartment C-3, Bridgeport, Connecticut, in connection with the investigation by the Federal Bureau of Investigation of an alleged illegal gambling business. Interceptions were instituted on December 17, 1971 and were terminated on December 20, 1971. On December 30, 1971, United States Magistrate, Dion W. Moore, upon application of Special Agent Danny F. Steinke, issued search warrants for a number of premises in the Bridgeport-Milford area.

ARGUMENTS

I.

The Language Of The Search Warrants Contained Sufficient Specifics For Their Validity To Be Upheld

The defendants take issue with the language of the search warrants specifying the items subject to lawful seizure. They argue that the phrases "gambling records" and "wagering paraphernalia" lack the requisite particularity and that overbroad discretion was left to the executing officers.[1/] Many courts, however, have upheld the validity of warrants containing the very same, or similar, paseology. For example, in United States v. Fuller, 441 F.2d 755 (4th Cir.), cert. denied, 404 U.S. 830 (1971), the Court, in dealing with language very close to that in question here, stated the following:

> "The description is necessarily general and clearly contemplates that matter relating to gambling activity but not precisely described might be seized. The intent of the generalized description is clearly to permit the seizure of any items directly related to the . . . booking operation . . . Nor do we think that a warrant which is limited to the seizure of items which are directly related to a booking operation to be the kind of general search prohibited by the Fourth Amendment. This is not a case where 'the constitutional requirement that warrants must particularly describe the 'things to be seized' is to be accorded the most scrupulous exactitude [because] the 'things' are books, and the basis for their seizure is the ideas which they contain.' Stanford v. Texas, 379 U.S. 476, 485 . . . (1965). The agents executing the warrant in this case were impowered to seize only a limited class of things, that which was related to a bookmaking operation. 'In the search of a gambling establishment, the same descriptive particularity is not necessary as in the case of stolen goods.' Nuckles v. United States, 69 App. D.C. 120, 122, 99 F.2d 353, 355 (1938)." United States v. Fuller, supra, at 760; see also, James v. United States, 416 F.2d 467, 473 (5th Cir. 1969), cert. denied, 397 U.S. 907; Katz v. United States, 369 F.2d 130, 134 (9th Cir. 1966), rev'd on other grounds, 389 U.S. 347 (1967); Calo v. United States, 338 F.2d 793, 794 (1st Cir. 1964); United States v. Auterbridge, 375 F.S. 418, 419-420 (S.D.N.Y. 1974); United States v. Russo, 250 F.S. 55, 57 (E.D. Pa. 1966).

The defendants' attempt an end run around this weight of authority by flatly asserting that the fact that this case involved a wiretap somehow

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1/ The actual language found in the warrants is as follows: "gambling records and wagering paraphernalia and evidence of a criminal offense in violation of the laws of the United States, including, but not limited to, betting slips and records, account sheets and books, line and price sheets and notations, sports information papers and schedules, telephone instruments, slips and books, lists of code names, financial statements, and United States currency."

makes the situation different. While wiretap evidence certainly makes it easier to judge whether or not gambling is in fact taking place, unless the defendants are alleging that the government had a visual capability as well as an aural capability, it hardly makes it any easier to predetermine what physical objects (other than a telephone) will be found on the premises to be searched. The argument, while novel, simply has no foundation in reality, and, since the defendants offer no factual support, it has little merit.

II.

Agent Steinke's Affidavit Was Sufficient
To Warrant A Man Of Reasonable Caution To Believe That
An Offense Was Being Committed At The Named Locations

The defendants have claimed that Agent Steinke misled the authorizing magistrate by identifying parties to intercepted conversations, which were relied on to support a finding of probable cause, without stating the underlying means of identification. The affidavit, however, recites specific and detailed information, from an informant of proven reliability, that Nicholas V. Lanese and William R. Balog were operating an extensive bookmaking business. The informant gave specific telephone numbers, including 372-5434, used by Lanese and Balog. The affidavit then explains that wire interceptions were conducted on certain telephones, again including 372-5434. Agent Steinke, under oath, identifies Lanese and Balog as having been intercepted at that number while engaging in illegal gambling. The affidavit goes on to recite numerous conversations between Balog, Lanese and other members of the operation. While the affidavit might have been more artfully drawn, this hardly detracts from the fact that Agent Steinke himself, and not an unnamed informant, made the identifications. Would the probable cause have been diminished if Agent Steinke had not been able to precisely identify the parties - that is, if the affidavit contained the same conversation from known telephones at known locations, but occurring between a party be-

lieved to be Nicholas Lanese and a party believed to be William Balog? We think not. This affidavit would still have "sufficiently warranted a man of reasonable caution in believing that an offense had been or was being committed". United States v. Melville, 309 F.Supp. 829, 833 (S. D.N.Y. 1970); see also, Dumbra v. United States, 268 U.S. 435, 441 (1925). The Supreme Court has said that affidavits for search warrants

> ". . . must be tested and interpreted by magistrates and courts in a commonsense and realistic fashion. They are normally drafted by nonlawyers in the midst and haste of a criminal investigation. Technical requirements of elaborate specificity once exacted under common law pleadings have no proper place in this area . . . Recital of some of the underlying circumstances in the affidavit is essential if the magistrate is to perform his detached function and not serve merely as a rubber stamp for the police. However, where these circumstances are detailed, where reason for crediting the source of the information is given, and when a magistrate has found probable cause, the courts should not invalidate the warrant by interpreting the affidavit in a hypertechnical, rather than a commonsense, manner". United States v. Ventresca, 380 U.S. 102, 108-109 (1965).

This affidavit also contains identifying information for other individuals, for whom there is no informant information. For example, telephone calls were placed to 878-7705, listed to Richard M. Lanese, and conversations were undertaken with an individual named "Rich" or "Richie" (Aff. pp. 8, 9, 12); calls were placed to 268-7014, listed to Charles Suglia, and conversations were held with an individual called "Charlie" (Aff. pp. 8, 9, 11, 12); calls were placed to a residence whose occupant was listed as Louis Mastro, and conversations were held with an individual called "Lou" or "Louie" (Aff. p. 10); calls were placed to 378-1251, listed to Edward C. Stoll, and conversations were held with an individual identifying himself as "Ed" (Aff. p. 16-17). This affidavit is replete with information providing a basis for the magistrate to reasonably infer that the individuals had been correctly identified. It should also be pointed out that, with the exception of Nicholas V. Lanese, William Balog, Roger L. Spinelli, and John J. DeLucia, the warrants called for the search of places and not persons.

The defendants' attempt to buttress their arguments by once again pointing out the government's request for voice exemplars. They would like to raise a presumption that because of this request, made over three years after the submission of the affidavit in question, Agent Steinke could not have identified the parties to the various conversations. The government, however, has repeatedly stated that the voice exemplars were sought merely as an additional means of identification which, under the circumstances, the government felt it was entitled to. The issue has been litigated and the court has agreed with our position. We therefore simply argue, at this point, that the request for voice exemplars should not, in any fashion, be considered as having a bearing on Agent Steinke's affidavit.

The defendants also request a hearing to "go beneath" the face of the affidavit, and cite, in support, two cases, United States v. Culotta, 413 F.2d 1343 (2d Cir. 1969), and United States v. Dunnings, 425 F.2d 836 (2d Cir. 1969). However, the Culotta case, in our judgment, bears no relationship to the defendants' proposition, and the Dunnings decision, we believe, supports the proposition that no evidentiary hearing should be held on this issue. The Court there held that a hearing with respect to the truth of a legally sufficient affidavit should only be held where "there has been an initial showing of falsehood or other imposition on the Magistrate", United States v. Dunnings, supra, at 840 (emphasis added). We would submit that the defendants, having ignored the fact that Agent Steinke himself swore to the identities of the suspects and that the wiretap information supplied to the magistrate fully corroborated the informant information given in the affidavit, and having made only vague accusations, have failed to make the necessary "showing" which would necessitate an evidentiary hearing.

III.

The Information Contained In Agent Steinke's Affidavit Was Sufficient To Support A Finding Of Probable Cause

The defendants next allege that Agent Steinke's affidavit is conclusory and fails to recite the necessary underlying circumstances. This contention is, to say the least, inaccurate. The affidavit contains information from a confidential source who, it is stated, was told the information by two of the suspects, Nicholas Lanese and Roger Spinelli. The source told Agent Steinke that Lanese had said that he ad thirty people working for him in his "bookmaking operation". Further information is then given, with Lanese cited as the source, setting forth the specific details of his operation. In a subsequent conversation, Lanese furnished the confidential source with a telephone number. In a conversation with Roger Spinelli, the source was told that he operates a telephone "book" for Lanese and that he obtains "line information" from, and gives "lay-off action" to, William R. Balog, whom Lanese had previously identified as being a participant in his operation. Certainly this information would allow an average reasonable man, even without Agent Steinke's expertise, to conclude that Lanese, Balog, and Spinelli were engaged in illegal gambling activity.

The affidavit also contains eleven pages of information gathered from the Court-authorized wire interceptions. While Agent Steinke synopsized the conversations cited in the affidavit, his summaries accurately reflect the content and import of the actual conversations. For example, Agent Steinke swore that at 6:31 p.m., on January 17, 1971 William R. Balog received basketball line information from Herman, and the defendants can hardly contend that that is not precisely what took place in that conversation. As another example, Agent Steinke relates that William Balog received a call from John DeLucia who told him that the basketball line for the University of Kentucky was incorrect. The actual conversations, in part, reads as follows:

> "Oh, Bill, before you, take Kentucky off the Board Billy.
>
> What's the matter?

> I got the wrong hop on the line, they put the wrong line up, the line is supposed to be 10" (7:11 p.m., January 17, 1971).

As a final example, Agent Steinke states (on page 14 of the affidavit) that Rober Spinelli told "Bob", at telephone number 367-0461, "not to accept any more bets from those guys".

This is not a situation like that in Nathanson v. United States, 290 U.S. 41 (1933)(cited by defendants), in which a private dwelling was searched solely on the basis of an agent's affirmance and belief that liquor, upon which no duty had been paid, would be found there. Agent Steinke did not simply state that the suspects were engaged in gambling, without stating how or why he reached that conclusion. (See, e.g. United States v. McSurely, 473 F.2d 1178, 1185 (D.C. Cir. 1972). Here Agent Steinke made it clear that the information came from the alleged offenders themselves via the Court-authorized wiretaps. Moreover, the Courts have never found fault with conclusions being made in search affidavits so long as a reasonable basis for those conclusions is present as well. Cf., Aguilar v. Texas, 378 U.S. 108, 112-114 (1964); United States v. Ventresca, supra, at 108. The summarized conversations provide abundant information for Agent Steinke to conclude that the suspects were engaged in gambling and for the magistrate to find that there was probable cause to believe that gambling records and wagering paraphernalia would be found on the persons and premises to be searched. We submit that, viewed in a commonsense fashion, as directed by Brenigar v. United States, 338 U.S. 160 (1949), the affidavit was more than sufficient to warrant a finding of probable cause.

IV.

The Affidavit Sets Forth Sufficient Facts To Establish The Reliability Of The Informant And The Credibility Of The Information

The defendants allege that the reliability of Agent Steinke's informant was not established. They attempt to support this contention

by drawing on Agent Steinke's statement that the informant provided information on more than two hundred occasions, which had resulted in the issuance of two arrest warrants. They further point out that no convictions had resulted. They apparently feel that this indicates quantity but not quality. The defendants ignore the fact that the informant had only been supplying information for five months and that the two defendants were awaiting trial. Agent Steinke also stated that the earlier information had been corroborated by visual observations, record examinations, other confidential sources, and police agencies. The information provided by the informant is specific and detailed and is stated to have come from personal conversations with two of the suspects. The information is corroborated by the wiretap evidence sworn to by Agent Steinke.

The test is not, as the defendants seem to imply, the number of arrests or convictions that have resulted from an informant's prior information. The test is whether the affidavit sets forth some information to support a conclusion that an unnamed informant is reliable, and whether underlying circumstances are stated from which the informant concluded that the particular illegal activity was occurring. Aguilar v. Texas, supra at 110-115. The purpose, of course, is that the magistrate must have a "substantial basis" for crediting the hearsay information. United States v. Harris, 403 U.S. 573, 581 (1971). We suggest, based on the factors cited in the previous paragraph, that the affidavit here contained sufficient information to satisfy both prongs of the test for determining the reliability of the informant and the credibility of his information. See, United States v. Sultan, 463 F.2d 1066, 1068-1069 (2d Cir. 1972).

V.

The Executing Officers Did Not Exceed The Scope Of Their Authority As It Related To William Balog

The defendant challenges the seizure of a radio, a clock, and a sum of currency on the grounds that they were not named in the warrants, that there was no authority to search the person of William Balog, and that the entire process was thereby invalidated. Unfortunately for this argument (as it relates to the currency), a warrant was issued for the search of William Balog's person an United States currency was specified in the warrant. (See Appendix A).

The government has already argued the general issue of the specificity of the language used in the warrants (See, Argument I). It is our position that the currency, having been particularly described, was lawfully seized, and that the radio and clock can properly be considered as instrumentalities of the crime and bear sufficient relation to the purpose of the search to be lawfully seized. See, United States v. Russo, 250 F.Supp. 55, 58 (E.D.Pa. 1966).

Should the Court disagree, however, the seizure of these items would affect only their own admissibility and would not invalidate the entire search. United States v. Russo, supra, at 57-58.

VI.

(a) Suppression Is Not Mandated Where A Phone Call Is Taken By An Officer On A Premise Being Searched For Gambling Paraphernalia

(b) A Statement Made By The Occupant Of A Premise Undergoing A Lawful Search Should Not Be Suppressed Where The Declarant Was Not Under Arrest And The Statement Was Volunteered

The defendant, Richard Lanese, has moved to suppress a statement made by him during the search, made under authority of a warrant, of his premises. He alleges that the taking of a phone call, by one of the officers, was unauthorized, and that a comment made by him in response to that phone call falls under the cloak of Miranda v. Arizona, 384 U.S. 436 (1966).

The government contends that the issue of the phone call taken by Trooper Simmons is disposed of by United States v. Fuller, 441 F.2d

755 (4th Cir.), cert. denied, 404 U.S. 830 (1971). In that case, the executing agents answered the phone for twenty-five minutes and gave out line information. The Court found that the telephone calls were closely enough related to gambling to fall within the generalized description found in the warrant, Supra, at 760. Here the agents, being authorized to seize the telephone, and having found other gambling paraphernalia, could certainly reasonably anticipate that telephone calls to the premises would relate to the gambling business. See, United States v. Kane, 450 F.2d 77, 85 (5th Cir. 1971), cert. denied, 405 U.S. 920 (1972).

The real issue here, however, is not the call, but the response it elicited from Richard Lanese. It is important to note that this is neither a custodial situation, nor a consent to search situation. This was a situation where the agents, after Mr. Lanese answered their knock, informed him of their identities and purpose. Mr. Lanese was not arrested. No force was used to gain entry, and, because the agents were armed with a warrant, no consent was needed or sought. The defendant relies solely on post-arrest cases to support his position. Certainly he cannot make a generalized claim that Miranda warnings are required in Fourth Amendment cases. See, United States v. Kohn, 365 F.Supp. 1031, 1034 (E.D.N.Y. 1973), aff'd 495 F.2d 763 (2d Cir. 1974). Taking the facts as set forth by the defendant, it is clear that no interrogation was taking place and that he volunteered the information without even being asked. He cites no facts indicating coercion or intimidation. He does not claim that he was questioned following his statement. The defendant may now regret having made the statement, but, in the absence of supporting facts, that is simply not enough to invoke the stern penalty of the exclusionary rule. Because the defendant was not taken into custody and was always in familiar surroundings, thereby removing the presumption of compulsion inherent in custodial surroundings, See, e.g., Schneckloth v. Bustamonte, 412 U.S. 218, 247 (1973), and

because he was not interrogated, the basic foundation for the application of the Miranda rule is lacking. We submit that the government did not violate any of his rights - he made the statement at his own risk - and suppression in this situation is not warranted.

VII.

Sufficient Facts Are Set Forth In The Affidavit To Support A Finding Of Probable Cause To Search The Premises Located At 45 Rose Street, Bridgeport, Connecticut

The defendant, Michael Piazza, has attacked the sufficiency of the warrant and the legality of the search at 45 Rose Street, Bridgeport, Connecticut, on the grounds that the information in the affidavit was stale, that the affidavit was based on hearsay, and that there was no showing that the items named were on the premises.[2/]

On the issue of staleness, the defendant alleges that the lapse of time between the obtaining of the information and the application for the warrant was such as negate any finding of probable cause. To be sure, Agent Steinke did not specify the exact dates of the interceptions pertaining to 45 Rose Street. (Aff. p. 14). He did, however, specify that the interceptions referenced in the affidavit were initiated on December 17, 1971 and terminated on December 20, 1971 (Aff. p. 7). Contrary to defendant's position, the government believes that this information was sufficient to enable the magistrate to judge the age of the information. At the maximum the information could not have been more than fourteen days old. The totality of the information presented in the affidavit shows a well-organized gambling business with members operating from established locations. The fact that Roger Spinelli contacted "Mike" at a telephone located at 45 Rose Street and listed to Michael Piazza indicates a certain degree of permanence. The stability, and continuing nature, of the enterprise is further highlighted by the fact that the

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2/ The memorandum relied on by the government was filed by the defendant on October 18, 1972.

numbers given to the informant by Nicholas Lanese in October, 1971 and Roger Spinelli in November, 1971, were still in use in December.

> "[W]here the affidavit properly recites facts indicating activity of a protracted and continuous nature, a course of conduct, the passage of time becomes less significant." United States v. Johnson, 461 F.2d 285, 287 (10th Cir. 1972); see also, Nuckols v. United States, 99 F.2d 353, 355 (D.C. Cir. 1938), cert. denied, 305 U.S. 626; United States v. Cantor, 328 F.Supp. 561, 568 (E.D.Pa. 1971), aff'd, 470 F.2d 890 (3d Cir. 1972).

Under these circumstances, we believe that a sufficient basis was present for the magistrate to evaluate the currency of the information contained in the affidavit.

The defendant also alleges that the information is totally hearsay in nature therefore may not be used to determine probable cause. The true question, however, is whether there is sufficient indicia of reliability. As argued above, we believe that reliability is inherent in the fact that the information comes from wire interceptions of participants in the business. This is not information channeled through an unnamed informant and then through the affiant; the named participants themselves, unaware that they were being monitored, provided the information related by Agent Steinke. Certainly the defendants' argument that Agent Steinke vouch for the reliability of the source of information that Michael Piazza was engaged in gambling is somewhat insane when there was evidence before the magistrate that that source was Michael Piazza himself.[3/] While it obviously gives the defendant no pause to state that a conversation of Roger Spinelli, in which Michael Piazza was mentioned, gives no cause to believe that Michael Piazza was engaged in illegal activities, it certainly could have given the magistrate food for thought when Agent Steinke related that Roger Spinelli, unaware of the government's monitoring, had stated, during a conversation

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3/ Agent Steinke stated that Roger Spinelli had engaged in a gambling related conversation with an individual called Mike at a telephone number listed to Michael Piazza. (Aff. p. 14).

regarding a certain football game, "I don't have them, you'll have to bet with Mike Piazza". (Aff. p. 14). We believe that the nature of the information, and the means by which it was obtained provides sufficient basis for reliability to be inferred.

The defendant challenges the finding of probable cause. We believe, however, that the affidavit contains sufficient information to support a finding of probable cause. The general proposition, as stated by the Supreme Court, is that:

> "In determining what is probable cause, we are not called upon to determine whether the offense charged has in fact been committed. We are concerned only with the question whether the affiant had reasonable grounds at the time of his affidavit and issuance of the warrant for the belief that the law was being violated on the premises to be searched; and if the apparent facts set out in the affidavit are such that a reasonably discreet and prudent man would be led to believe that there was a commission of the offense charged, there is probable cause justifying the issuance of a warrant." Dumbra v. United States, 268 U.S. 435, 441 (1925)(emphasis added).

In this case, the information as argued above, is inherently trustworthy, and provided sufficient basis to reasonably conclude that Michael Piazza was engaged in illegal gambling. It then became reasonable to infer that gambling records and wagering paraphernalia would likely be found on the premises used by Michael Piazza. While the information, we concede, was not overwhelming, we do believe that it was sufficient to justify the search and the fact that the magistrate found probable cause should itself be "a substantial factor tending to uphold the validity of the warrant". United States v. Ramirez, 279 F.2d 712, 716 (2d Cir 1960), cert. denied, 364 U.S. 850.

Finally, the fact that a state judge may have dismissed a possession of marijuana charge against the defendant should have no bearing on this case since it is clear that the affidavit and warrant concerned gambling, not drugs, and the defendant stands before this Court charged with violation of a federal gambling statute. Furthermore, the defendant

does not allege sufficient facts to determine the reasons for the state court's actions. It does seem obvious, however, that the State Court did not consider the question of whether there was probable cause to search for gambling paraphernalia. For that reason alone, the decision should carry no weight in the consideration of this matter.

CONCLUSION

Based on the above-stated reasoning and authorities, the United States respectfully requests that the defendants' Motions To Invalidate Searches and Suppress Physical Evidence be denied.

UNITED STATES OF AMERICA

PETER C.DORSEY
United States Attorney

BY: Peter R. Casey III

PETER R. CASEY, III
Special Attorney
U.S. Department of Justice

CERTIFICATION

This is to certify that copies of the foregoing Response have been mailed, postage prepaid, this 7th day of June, 1976 at Hartford, Connecticut to all counsel of record.

Peter R. Casey III

PETER R. CASEY, III
Special Attorney
U.S. Department of Justice

APPENDIX A

Form A. O. 93 (Revised 1970) Search Warrant

United States District Court

FOR THE

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA

vs

WILLIAM R. BALOG, white, male, 5'7", 180 pounds, age 33, brown receding hair.

Magistrate's Docket No.

Case No.

SEARCH WARRANT

To Any Special Agent of the Federal Bureau of Investigation

Affidavit having been made before me by Special Agent DANNY F. STEINKE

that he { has reason to believe } that { on the person of }

WILLIAM R. BALOG, white, male, 5'7", 180 pounds, age 33, brown receding hair.

in the District of CONNECTICUT

there is now being concealed certain property, namely gambling records and wagering paraphernalia and evidence of a criminal offense in violation of the l. of the United States, including but not limited to, betting slips and records, account sheets and books, line and price sheets and notatio sports information papers and schedules, slips and books, lists of code names, financi l statements, and United States Currency

which are designed or intended for use or which have been used as a means of committing a criminal offense are the fruits of such offense and constitute evidence of such criminal offense, in violation of the laws of the Uni d States; such criminal offense being the conducting, financing, managing, supervising, directing and owning all or part of an illegal gambling business in violation of Title 18, United States Code, Sections 1955, 2 and 371

and as I am satisfied that there is probable cause to believe that the proper y so described is being concealed on the { person } above described and that the foregoing grounds for application for issuance of the search warrant exist.

You are hereby commanded to search forthwith the { person } named for the property specified, serving this warrant and making the search { in the daytime } and if the property be found there to seize it, leaving a copy of this warrant and a receipt for the property taken, and prepare a written inventory of the property seized and return this warrant and bring the property before me within ten days of this date, as required by law.

Dated this 30th day of December, 19[illegible]

U. S. Magistrate

[1] The Federal Rules of Criminal Procedure provide: "The warrant shall direct that it be served in the daytime, but if the affidavits are positive th[illegible] property is on the person or in the place to be searched, the warrant may direct that it be served at any time." (Rule 41(c))

FILED
JUN 14 8 22 AM '76
U. S. DISTRICT COURT
NEW HAVEN, CONN.

MICROFILM
JUL 21 1976
BRIDGEPORT

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	
V.	:	CRIMINAL NO. H-298 CRIMINAL NO. H-299
MICHAEL PIAZZA, NICHOLAS LANESE, RICHARD LANESE, NICHOLAS MESSINA, and WILLIAM BALOG	:	

7/19/76
Motion is Granted.
RCB
USDJ

MOTION OF THE UNITED STATES FOR A COURT ORDER DIRECTING THAT THE DEFENDANTS IDENTIFY THEMSELVES BY NAME WHEN SUBMITTING TO PREVIOUSLY ORDERED VOICE EXEMPLARS

This Court has previously ordered that the defendants in Criminal Nos. H-298 and H-299 submit to the taking of voice exemplars by the Federal Bureau of Investigation. All of the defendants who have complied have identified themselves by name when giving their voice exemplars, except for MICHAEL PIAZZA, NICHOLAS LANESE, RICHARD LANESE, NICHOLAS MESSINA, and WILLIAM BALOG. Since we do not believe that giving one's name, in this situation, gives any evidentiary advantage to the government and does not infringe on any interests protected by the Fourth or Fifth Amendments, See, e.g. United States v. Dionisio, 410 U.S. 1 (1973), we respectfully request the Court to direct the above-named defendants to resubmit to the voice exemplar process and to identify themselves by name as a part of that process.

UNITED STATES OF AMERICA

PETER C. DORSEY
United States Attorney

BY: Peter R. Casey III

PETER R. CASEY, III
Special Attorney
U.S. Department of Justice

FILED
JUL 20 9 05 AM '76
U.S. DISTRICT COURT
NEW HAVEN, CONN.

CERTIFICATION

This is to certify that copies of the foregoing Motion have been mailed, postage prepaid, this 10th day of June, 1976 at Hartford, Connecticut, to all counsel of record.

Peter R. Casey III

PETER R. CASEY, III
Special Attorney
U.S. Department of Justice

FILED
JUN 24 8 21 AM '76
U.S. DISTRICT COURT
NEW HAVEN, CONN.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	
V.	:	CRIMINAL NO. H-298
WILLIAM BALOG, ET. AL.	:	

RESPONSE OF THE UNITED STATES TO
MOTION FOR SUPPLEMENTAL DISCOVERY

The United States responds to the defendants' motion as follows:*

1. At the time that the voice comparison process is completed, the government will provide the defendants with results of the comparisons and the identity of the persons who are able or unable to make identifications.

2. The government objects. This request is clearly beyond the scope of a Rule 16 motion. The defendant is free to inquire into the qualifications of any government witness at trial.

3. Same response as above.

4. Same response as given to item 1, above.

5. Sony Cassette Recorder, Model TC110.

6. Capital, 1-C90.

7. The tapes in question had not been used on any prior occasion.

UNITED STATES OF AMERICA

PETER C. DORSEY
United States Attorney

BY: Peter R. Casey III
PETER R. CASEY, III
Special Attorney
U.S. Department of Justice

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*Responses correspond to the sequence in which the items appear in defendant's motion.

CERTIFICATION

This is to certify that a copy of the foregoing Response has been mailed, postage prepaid, this 23rd day of June, 1976 at Hartford, Connecticut to all counsel of record.

Peter R. Casey

PETER R. CASEY, III
Special Attorney
U.S. Department of Justice

FILED
JUN 28 8 21 AM '76
U.S. DISTRICT COURT
NEW HAVEN, CONN.

UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF CONNECTICUT

UNITED STATES

VS

WILLIAM BALOG

UNITED STATES

VS

NICHOLAS LANESE

CRIMINAL NO. H-298

UNITED STATES

VS

NICHOLAS MESSINA

UNITED STATES

VS

RICHARD LANESE

OBJECTION TO MOTION FOR A FURTHER ORDER
FOR IDENTIFICATION WHEN SUBMITTING TO VOICE EXEMPLARS

The defendants, Nicholas Lanese, Richard Lanese, Nicholas Messina and William Balog, hereby object to the Government's Motion for a further order requiring them to name themselves when giving voice exemplars for the following reasons:

1. An examination of the transcripts of intercepted wire communications, alleged to have been participated in

by the name lefendants, indicates that first names were used in said conversation from time to time by individuals alleged to be the named defendants.

2. The recitation in a voice exemplar of names similar to those used in the intercepted communications alleged to have been participated in by the named defendants would give the Government an evidentiary advantage and most certainly infringe on the defendants' rights under the fourth and fifth amendments.

3. The Government would have an unfair advantage over these defendants as more than one voice exemplar would exist to aid the Government in identification as to the four named defendants, which circumstances would not exist as to all of the defendants in these two criminal indictments.

For the reasons stated above, the defendants respectfully object to the Governments motion for further order.

THE DEFENDANTS

BY Richard T. Meehan
RICHARD T. MEEHAN
Their Attorney

This is to certify that a copy of the foregoing has been mailed, postage prepaid, to Peter R. Casey, Special Attorney, U.S. Department of Justice and to Peter Dor /, Esq. and John Tarra t, Esq.

Richard T. Meehan
RICHARD T. MEEHAN
Attorney at Law
#37036

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

- - - - - - - - - - - - - - - - - x

UNITED STATES OF AMERICA :

vs. : CRIMINAL H-298 & H-299

ROGER L. SPINELLI and
WILLIAM R. BALOG, :

Defendants. :

- - - - - - - - - - - - - - - - - x

New Haven, Connecticut
March 15, 1976.

B e f o r e :

HONORABLE ROBERT C. ZAMPANO, U.S.D.J.

A p p e a r a n c e s :

For the Government: PETER CASEY, ESQ.
Assistant United States Attorney
450 Main Street
Hartford, Connecticut.

For Defendant Spinelli: HAROLD ROSNICK, ESQ.
855 Main Street
Bridgeport, Connecticut.

For Defendant Balog: RICHARD F. MEEHAN, ESQ.
171 Golden Hill Street
Bridgeport, Connecticut.

MR. ROSNICK: With the Court's permission, I don't intend to take up too much of the Court's time. Briefs have been filed and they are fairly self-explanatory, and just very quickly -- and I think the Government has conceded that most of the arguments with respect to Rogert Spinelli personally apply to almost all of the defendants in the case. And if there is to be a dismissal as to Roger Spinelli, there be a dismissal as to all the defendants.

Roger Spinelli is claiming 282 days under the motion, and under the brief, and under a separate letter which was sent to your Honor.

In response to the period of time, I think the Government has come up with arguments that can almost be classified as desperate, and I would like to go through the four periods of time which Roger Spinelli claims.

We claim from June 29, 1972, to August 8, 1972, forty days.

The Government has conceded that time period, and I am not going to argue any further on it.

From March 6, 1973, to June 29, 1973, as to Roger Spinelli, we claim 115 days. The Government has conceded 101 of those days. They have protested

fourteen of those days because apparently there was a motion filed by Roger Spinelli for a two week extension of time to file certain other motions. I am not going to claim those fourteen days today.

I think the Government is probably right on that. So now we have a total of 141 days. Now, on July 23, 1973, to November 12, 1973, that's really the crux of what your Honor has to decide.

THE COURT: That is the so-called signature card time?

MR. ROSNICK: I don't --

THE COURT: Take your time. I will hear you.

MR. ROSNICK: I don't know what you mean by "the signature card."

THE COURT: Go ahead.

MR. ROSNICK: On July 23rd, there was a hearing, and in ruling on all of Roger Spinelli's pending motions. One of the arguments that the Government has put forth to stay this 112 days, which we claim in this last period, is that the motion to suppress has been -- in that it has always been the intent of the defense counsel to file a motion to suppress after the pleadings have been

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concluded.

There is no question that motion to suppress as well as a motion to dismiss on the merits has been contemplated by the defendants ever since this indictmert was brought in this action.

On the other hand, no motion to suppress was going to be filed, and no motion to dismiss was going to be filed until the discovery proceedings had been concluded, because only after the discovery proceedings as to how Henry Peterson was appointed, with the legal issues, would be clarified in the defendant's mind as to the filing of the motion to suppress. And it is conceivable that by the time the discovery proceeding had been concluded, defense counsel may have felt that there was no need to file a motion to suppress on Henry Peterson.

Now, the Government is saying, well, it is likely, and it was all probable that a motion to suppress was going to be filed; no question about that. And he is trying to claim that because we intended to file at some future time that this should stay the entire proceedings and not be chargeable against the Government during this July 23, 1973, to November 12, 1973.

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I just can't find any merit at all in that type of argument. Something that defense counsel may do. I don't believe Rule 4 contemplates that.

They also claim in its brief, the Government claims, that because this is a case of multiple defendants, that the filing, in effect, of a motion on behalf of one defendant specifically for that one defendant serves to stay the proceedings or the time chargeable against the Government as against all defendants, and the Government cites subsection 5E of the plan, and it says that a reasonable period of delay when the defendant is joined for trial with the co-defendant as to whom the time for trial has not run, and there is good cause for not granting a severance.

We submit that this rule is intended for the situation where a defendant, one defendant, the Government is ready for trial, but for some reason they are not ready on the co-defendant. No question in that certain situations the Government would have a right for a reasonable delay to catch up with the other defendants who are in the case. That's not the situation here.

The Government wasn't ready on any of the

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defendants and they have really squeezed Rule 5E beyond its intent.

This is a case that's five years old. One other argument I would like to address myself to is: They state that as to Roger Spinelli, after I think it was the July 23rd date, there was a -- the Government had been ordered to file with Defendant Spinelli a clarification or a statement as to how Henry Peterson got to be acting Assistant Attorney General.

The motion for discovery had been ruled on. I think it actually came up in the context of the motion for an order allowing us to take the deposition of Henry Peterson down in Washington, and the Government requested that they be allowed an opportunity to set forth the statement or affidavit as to how he actually got appointed so as to avoid the necessity of deposition.

The Government never complied with that and they have still not complied with that, I don't believe, but maybe they did, after the stay was lifted.

They are claiming that during the period of time in which the Government failed to provide us with answers to that, that was our motion for

discovery and production was still pending.

The motion had been ruled on, the Court had made an order. At that point we claim that the motion was no longer pending.

They are also stating that the Government about two or three weeks later filed their own motion for discovery and production and they are trying to state in their memorandum now that we should be charged with the period of time in which the motion for discovery and production had been pending.

I think from an examination of the file it is obvious that though it's not entitled a motion for discovery and inspection, it is that.

All they were doing is asking for an opportunity to file some alternative to the Court's ruling on providing a statement for Henry Peterson, how Henry Peterson became admitted as an acting Assistant Attorney General, and they are trying to claim that because the Government filed a motion now we should be charged with that time, they should not be charged with that time.

I can only state again that I think outof the 282 days that we claim, the Government has a legitimate protest as to 14 of those days and here

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we are talking about a six-months rule, 190-days, and I think that under one of the alternatives the Government has come out with, they state that Roger Spinelli only has 171 days.

I think the Government at this time has realized they made a mistake in this case and the burden of the Government in bringing an action where you have multiple defendants is the burden upon them, not upon the defendants to proceed with the trial.

Most of these defendants, I think, would have liked separate trials. I think motions for severance have been filed by the various defendants and it's a risk that the Government assumes when they brought this type of case, and I think it's encumbent upon the Court at this time to dismiss.

One further thing, your Honor: There is also the question that it applies to certain of the defendants on the question of the voice exemplars.

The Government, after filing this notice of readiness, has come to Court and asked for leave to have voice exemplars taken of the various defendants, and I think the brief addresses itself to that point fairly clearly, and the argument that we are making is that the Government has filed a

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notice of readiness of trial.

Obviously, they weren't ready for trial when they filed it because why would they need these voice exemplars? And I think there are cases cited in the brief originally filed with the Court and really, I don't think I should address myself further unless Mr. Meehan has anything further.

MR. MEEHAN: If I may add this point.

THE COURT: I will hear you.

MR. MEEHAN: I think the fact that a notice of readiness is not sufficient unless the Government assures the Court that at the time they filed the notice they were ready to commence prosecution.

Now, as I understand the statute that these men are charged with, the Government has to prove a certain amount of money in a combination of five or more persons, and I grant that the evidence will disclose here that there was searches at various -- at two different points in Bridgeport in which the Government has recovered physical evidence that they would no doubt try to get in at a trial.

But I submit to the Court that that alone would not be enough for the Government to prosecute the case here.

They have to rely on the spectograph. The

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voice print, and again I think the Court has to be concerned with the fact that it is not just an indication by the Government, but I think the Court has to inquire now of the ability of the Government to proceed against all the defendants here, at least five, absent the voice exemplars, or the evidence that would come as a result of the voice exemplars.

As Mr. Rosnick said, this case is five years old. It is true we had a delay because of the Giordano decision but I think the Court ought to be aware of the fact that the Government is claiming this was such an organized situation and yet we find that the Court had to appoint so many public defenders for these so-called organized gamblers here, it's a kind of a case that I think the Government was reluctant to and could not prove at that time. They dragged their feet and I think that the defendants ought to be given the benefit of the dismissal.

MR. CASEY: Your Honor, I believe that the Government's response largely speaks for itself. I don't have many comments to make, just a few.

A, the Government, in the District of Connecticut, has never relied on spectographs, voice spectographs, or voice prints. I don't know why the defendants keep insisting that's what we are going to do in the face of

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my continual denials, that it's going to be anything like that.

I think the Court is familiar with the process that the Government uses in these cases and we get a voice exemplar, the agents of the FBI who are familiar with the voice listens to the voice exemplars, compares them with the tapes in the possession of the Government, and a comparison is made.

The agent testifies to this at trial. He is there for cross-examination by the defendants, and since the Supreme Court has made it clear that there is no Constitutional privilege going to voice exemplar or handwriting exemplars, I fail to see how they can claim prejudice.

The Government some time ago made the motion and it's obvious that there has been time for it and in fact the whole process takes only a day, and so I don't think that the defendants are going to be prejudiced.

I think the Government is within its right in asking the Court for permission to take such exemplars even though the grand jury stage of the proceedings has been finished.

In terms of what I guess is the major issue,

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I really won't go into the Balog aspect because I think that's very clear. That's going to be a simple question, whether the Court finds that certain decisions were pending.

If the decisions were pending that time could not be charged against the Government and they fall within the period of the six months limitation.

The rule clearly specifies that decisions that are under advisement or have been reserved by the Court are to be excluded.

I think that the Government brief covers that sufficiently.

In terms of the Spinelli case, the Government has given your Honor several alternatives in its papers. I think they are self-explanatory and I am not going into them in any detail.

I want to point out to the Court, however, that the speedy trial rule, the six month rule, cannot, I don't feel, be viewed in a vacuum, and it can't be administered in a vacuum. You have to take the realities, the facts of the individual cases, which I am sure the Court is well aware of having dealt with a number of these issues.

In this case I think it's clear that the Government has never, from the beginning, attempted

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to delay the proceedings to gain any kind of unfair advantage for some type of -- any type of advantage over the defendants.

I don't think they have been prejudiced by the delay in getting the notice. They are able counsel and the many briefs and memoranda, I think, show that.

The normal practice is, as this Court is aware, at least my practice in the District of Connecticut, had I been in this case from its initiation, I don't think we would have faced this problem. But that's by the boards now.

The Government has not acted unfairly. We have tried to expedite things, and Mr. Rosnick has pointed out that there has been no question in their mind that the motion to suppress has been contemplated after the discovery concerning Henry Peterson, and I think your Honor raised this as the signature card issue.

I think this is the point upon which this case is going to turn in favor of the Government or the defendants.

Between July the 23rd and November the 12th, that issue of Henry Peterson was still outstanding. I believe, and I may be wrong, I believe it's been

resolved. I believe the period that we were stayed for the Giordano decision, the Government submitted papers on that.

I don't have all the file with me, but I am pretty sure on that. I can check it, but as the Court will note from the short transcript that I submitted with the Government's papers that was in issue.

It was an issue in the Court's mind and the Court asked that the Government do something about it.

I don't think that that time should be charged against the Government when viewed in the total context of this case, that the key issue, if we get beyond this point, is going to be Henry Peterson and the suppression hearing.

It's always been there and everybody has known about it. I think to penalize the Government at this point would be unfair to the Government in light of its action and its position throughout the case.

That's all I have.

THE COURT: Anything further?

The Court has some preliminary observations that it wishes to place on the record with respect

to the Balog and Spinelli cases.

As I review the moving papers it occurred to me that these cases have been on this docket for such a length of time that I just had to sit back and try to recollect how we reach the state of affairs that we have this morning.

I must say that I look first to the Court's actions over the past few years with respect to these cases because I was disappointed in myself that I let these cases slip out of my grasp and that Court management of the case leaves something to be desired.

I say this particularly since I am very conscious of moving cases along, particularly in these multi-defendant cases, and I recognize that firm judicial control is necessary, or else these cases will languish on the docket.

I must also say that I came to the conclusion that both the Government and the defendants are not completely free from fault. The tremendous strain of other court business was one factor.

Among other things I had the long bank merger case, which was tried for months and I had the Pressure Science case, which was tried for months in this period of time, in addition to the

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unusually heavy Court docket in this district.

Among other things, the civil rights case and the habeas petition out of the prison, but I also concluied that the record, that is, the cold record, doesn't tell the full story here.

I recall numerous in chambers conferences with the attorneys. The attorneys were going in and out of this case -- these cases throughout their history. I remember particularly one long conference that I had with the attorneys in chambers and there was very little question in my mind that the Government's interpretation of what we were doing there in that period of time is the correct one.

Now, with respect to the Balog case, I have no difficulty at all. I think even the bare record demonstrates that the Government is entitled to have the motion to dismiss denied. I think the record is much clearer in that case. The time spans are set out in the briefs and I do find that motion to dismiss in that case should be denied.

Spinelli is more troublesome. But I find that again the Government's interpretation is the one I should adopt. While it is true that certain motions do not appear on the record to be pending, there is not the slightest doubt in my mind that

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whenever we talk in chambers that counsel assumed with the Court as well as with the Government that these motions were to be filed and I should know that.

What I was trying to do was avoid doing a very crucial time in our national history, the taking of depositions of key figures such as Attorney General Mitchell, and we discussed it, we talked about it, and when I view a motion as stating "offered without prejudice" in this particular -- in these particular cases, I read those docket entries to mean "offered without prejudice" because the defendants are going to file these motions at a later time after we work out the agreements reached in chambers.

For example, I have a distinct recollection with Attorney General Mitchell, that we were going to try to work it out, and I did order and rule on the motion, but there was an understanding, or at least in my mind, that time would have to pass before the Government could take a firm stand.

I remember it clearly, Mr. Tarrant saying, "I will try to get Attorney General Mitchell's affidavit out -- I will talk to his lawyer who is representing him in the Watergate situation, try to

get him on the phone. I will try to get certain other things to avoid the necessity of having to take his deposition."

Now, I am not sure how I marked the file at that time, but I may well have said, "Granted" but knowing full well that there would be problems.

We have to take ourselves back to those days when the government attorney just could not reach the attorney general. Ordinarily, that would not be an explaration I would accept, but I do remember Mr. Tarrant told counsel and the Court that he had to work through Mr. Mitchell's attorney and all that would take time.

I have very carefully gone through each and every paper submitted and, of course, the Spinelli case, we have Spinelli claiming 282 days, Roballey 322 days, Piazza, 285, and so forth, and the crucial date in that particular case is the time span mentioned by counsel.

I resolved that issue in favor of the Government for the reasons stated by the Government, and for the reasons stated by the Court, and I do the same in the same case of Balog, so the motions to dismiss are denied.

I am not going to let this opportunity go

without trying to make up for past delays, and again, let me state for the record, that there were justifications for some of the delays. I think the Giordano and Chavez stay was one that made sense.

These cases will take a long period of time to try, and counsel recognize that if we tried the case at that time and the Chavez situation or the Giordano situation were pertinent to our case, and they went against the Government all the way down the line, that the time spent on these cases would have been ill spent and when the Chavez and Giordano case decisions came down, I remember meeting with counsel and we were trying to get copies of the opinion.

I remember that the attorneys disagreed with the Government's interpretation of Chavez, and it was quite a while before we got the full implication of those two opinions, and I just say that it's not only a reflection of our intelligence, that it takes a little time to analyze those opinions, but I'm still reading law journal notes as to the full meaning and effect of Chavez and Giordano.

One just came out the other day of great

interest as to what those two cases really hold for the interpretation and analysis of the wire tap statute, Title 3.

So that took us quite a bit of time, but I have to at this time put a halt to any further delays and get these cases under way.

With respect to the voice exemplar, I am absolutely satisfied that your representations should be adopted, Mr. Casey, that you have represented on numerous occasions that you were ready for trial, you wanted to get to trial, and that the voice exemplars were not an essential part of your case and so, therefore, I do reject the defendants' opposition and adopt the Government's position on that issue.

Now, where do we go from here?

MR. CASEY: In terms of the voice exemplar issue, your Honor, I will make arrangements so that can be taken care of within a week to two weeks. We can get that out of the way and then I think it depends on the suppression motions that the defendants might desire to bring.

MR. MEEHAN: In opposition to the motion for voice exemplars, we filed a small brief, but I would be willing to withdraw my objection to the

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voice exemplars right now if Mr. Casey will assure the Court that all he wants is the voice exemplar and there is no need for us to be concerned with confronting an expert on a spectograph voice print analysis.

If what he wants it for is what he indicated to the Court earlier, is just to have an FBI man listen to it, and that FBI man is going to come in here and testify, then I will withdraw my objection right now.

If, however, the Government intends to use this voice print exemplar and submit it to an expert, and I ask the Court to seriously consider what Mr. Casey has just now said to the Court in opposition to our motion to dismiss, that it's their procedure not to use an expert but only an FBI man.

If we can have that assurance from the Government, I will withdraw my objection right now.

THE COURT: Would you like to respond, Mr. Casey?

MR. CASEY: Your Honor, I thought I made it more than clear that the process that will be used is that the individuals will be asked to

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come to a certain place, they will be asked to read a document, probably the Declaration of Independence or part of the Constitution. That would be recorded and an FBI agent will listen to that recording and compare it with the voices from the wire tap, and then he will make a judgment and he will testify to that judgment at trial.

There will be no electronic analysis or scientific analysis above and beyond his own personal analysis that the voices are either identical or they are different. That's the whole extent to it.

MR. MEEHAN: I will withdraw my objection.

MR. ROSNICK: If your Honor please, on that basis I would also ask for an additional request to the Government to represent to the Court at this time that the voice exemplars will be used solely for this proceeding, they will not be turned over to the Internal Revenue Service or any other governmental agency and that they will be destroyed after the proceeding is concluded.

MR. CASEY: Your Honor, to that I will not make such representation because I don't think it's necessary. If a voice exemplar is given under a lawful order of the Court, I don't see where the

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defendant can insist that it may not be compared with other times, although I fail to see how a tape recording of somebody reading a part of the Declaration of Independence can ever be used against him in any other matter.

THE COURT: Your agreement is noted for the record. I thought implicit in what I said a few moments ago was that I granted the Government's motion without any strings attached.

The Government voluntarily has assumed certain conditions and I find no cause to impose any conditions beyond those which Mr. Casey already agreed to with counsel, attorney Meehan.

The two motions to dismiss are denied and my question now again is: Where do we go from here?

I think that I should order counsel to be ready for trial on my May calendar which should be around May 4th. I will firmly set the case down for trial on that date. I want the clerk to get out the notice now so that counsel can all arrange their schedule.

In the meantime, I recognize that I promised counsel that their motions to suppress would be heard and that I should meet with counsel prior to

trial to go over tying in scheduling and various other aspects of the case that involve lengthy trials.

I'm going to leave that open as to exact dates, hopefully lead counsel will get together with Mr. Casey and Mr. Tarrant, meeting with my law clerk or call my law clerk, and set up these dates and let counsel know they will meet at any time prior to May 4th, so that the case can be ready.

Now, if May 4th is a date that is highly inconvenient, I will give an alternative date to counsel, and that will be May 11th, a week later. But these cases must go forward. We must get off dead center here and there will be no further delays unless there is such good cause that I cannot deny a further motion to continue the cases.

MR. ROSNICK: May I make a few comments for the record on your rulings on the six month rule?

As far as Spinelli is concerned, I only recollect one conference with your Honor in chambers and that was subsequent to the decision in Giordano and Chavez and when you asked for lead counsel be appointed and any motions that the file be filed on a consolidated basis.

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THE COURT: Weren't you at the conference where we discussed for three hours --

MR. ROSNICK: Excuse me --

THE COURT: -- what we were going to do with the signatures and depositions?

MR. ROSNICK: Excuse me, your Honor, there was also a conference where four or five counsel were present and the question of whether the signature was authenticated, and that again was subsequent to the Giordano and Chavez decision, and I think it was sometime in 1975.

THE COURT: One thing that is very distressing is when the Court has a recollection contrary to counsel's, and I respect your judgment, but I think we had that conference, we had more than one conference, and I remember having two or three conferences just on counsel for Mihigel.

MR. MEEHAN: Your Honor is correct.

THE COURT: Counsel were going in and out of my chambers during that period of time --

MR. MEEHAN: Your Honor is correct. What the problem is that I can remember being at several conferences in your chambers and not all counsel were there, so I think that --

THE COURT: As I say, I am not putting this

onus on the defendants. In fact, of the three parties involved, the Court takes primary responsibility, the Government second, and the defendants are a very weak third as far as being responsible for the delay. So I am the first to take full responsibility for the fact that I did see counsel in chambers on occasion when Mr. Tarrant would say, "I have a couple of attorneys here in Balog and Spinelli, and I want to see you," and I am frank to confess I never did sit down and say, "Let's make notes," or, "Is every single attorney here present who has an appearance in the case?" and there may have been times when I assumed, perhaps wrongly, that certain attorneys were really handling the procedural aspects of these cases with the Court, and that there was no need to have each and every Court-appointed attorney here.

Whatever result I may have, and whatever effect that may have from a legal point of view, in my opinion, it's not enough to grant the motion to dismiss.

On the other hand, another forum may have a different view. That is why I am putting on the record that you may be right in your recollection. It's contrary to mine, but that may be because you

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weren't there.

MR. ROSNICK: For the record, if your Honor please, as counsel for Roger Spinelli, I think Mr. Spinelli has had a leading position in this trial, and his counsel has had a lead position in this trial, and I believe I have attended every conference or every hearing on every motion that in any way pertained to Roger Spinelli. I don't believe I missed any conferences and again the only meeting with your Honor that I recollect or any meeting that I recollect with your Honor in chambers were following the Giordano and Chavez decision.

All other discussions on all the motions were in open Court and, if your Honor please, I think again when the motions to suppress went off without prejudice, I think it's exemplified by the fact that the Giordano and Chavez decision took away maybe five or six legal arguments that would have been originally brought on the motion to suppress and after the decision was rendered the motion to suppress in those five or six issues became moot, and I again cannot see how the fact that at some future time motions to suppress may be contemplated is nonchargeable against the

Government.

One final point, if your Honor please, on the question of being ready for the trial on May 4th or May 11th. GIordano and Chavez left open the question of the Henry Peterson issue. The Fifth Circuit Court of Appeals has decided that Henry Peterson, as an acting Assistant Attorney General, was not qualified to authorize the wiretaps. It's a factual question whether it was Mitchell or Peterson who is the one who actually rendered the authorization in this case.

In the affidavits that are filed, it seems clear that it's Peterson. That will be a factual question that's going to have to be litigated. In view of Mitchell's conviction, I don't think the defendants are going to have to rely on any affidavit. We have a right to cross-examine a convicted felon and it's going to be an evidentiary hearing on the motion to suppress.

THE COURT: All right. All I'm saying is that I want you to get together with the Government, discuss what's to be done from this day forth, and then notify my law clerk, and if there is an evidentiary hearing that's been agreed on and is worked out as to time and date, let my law clerk

know and we will try to fit your schedule. So whatever we have to do before trial, let's get with it and let's get it done.

MR. ROSNICK: Is there any way in which your Honor has notes or the Court has record notes of any meetings that were attended by any counsel that your clerk could send those to Roger Spinelli and other counsel in this case, because this is going to be an appeal question in the event an appeal is taken.

THE COURT: I will check.

MR. MEEHAN: Maybe I can assist the Court here. I'm saying this with regard to my client, Balog, but I recall we had a conference with you in chambers and the only ones present were Mr. Zeldes and Mrs. Amendola and myself,and then we had another conference in your chambers, I believe Mrs. Amendola was present and Mr. Zeldes, I think, was present, and Mr. Flynn, I think, was in on One of them.

Then it got to the point where I think your Honor wanted to appoint lead counsel because there were so many defendants in the case, and so many lawyers, that we had an open conference in the courtroom where we had a number of lawyers sitting

in the jury box for all the defendants, and then --

THE COURT: In a way, that was an in chambers conference, but there were so many attorneys we had to come into the courtroom. I think I remember that. What happened at that meeting?

MR. MEEHAN: I think at that point it was sort of so difficult to find out where we were going that your suggestion was we get lead counsel and then you asked us to go in and have a meeting before leaving the building and we used the jury room and we came back and reported to your Honor that we had selected lead counsel and what we were going to do in the case, and I think we indicated to your Honor that it was going to be motions filed and at that time we indicated to your Honor that we contemplated a motion to suppress for wiretap and motion to suppress the physical evidence, and then we went forward, you will recall, on our motion to address to the wiretap and that's been -- we got into that stay proceeding with Giordano and Chavez.

I can recall at least three if not more. I think one other day we did come into your chambers

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and I don't remember the lawyer, but when we were in your chambers on two or three occasions that I recall I know for a fact that not all defense counsel were present. I know Mr. Rosnick was not present.

If that can assist the Court.

MR. ROSNICK: This third conference was after the Giordano and Chavez decisions?

MR. MEEHAN: Yes. In fact, it was with regard to these motions here that I know Mr. Flynn was there, and I was there and another one or two lawyers, I think MR. Zeldes was there. There were three or four.

THE COURT: I remember another conference where Mr. Tarrant reported that he had talked to someone, possibly Attorney William Hunley, and he was almost certain he would get an affidavit from Mr. Mitchell, and then I remember we met again and he said, "No, he could not get that affidavit" --

MR. ROSNICK: That was in open Court on the record, yes.

THE COURT: But in any event, Mr. Rosnick, you have ever right to protect your client, and you are an excellent attorney, and I commend you for it. But I am sorry I do not have notes. I did

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not make notes myself.

Many times these conferences occurred when I was in the middle of a long case and I would see counsel on the spur of the moment.

On the other hand, it seems to me that it should not come down to your word against mine for a decision. I think in fairness to you, whoever reviews this case should review it on the cold record because that's what you are entitled to. I am not under oath. I don't have notes, and in my opinion my reference to the conferences were not to use those conferences as a reason to deny your motions.

I denied your motions based on the record as it exists, and as my law clerk and I figured it out with respect to the dates.

All I'm saying is that when Mr. Casey said there were understandings that motions to suppress would be filed, I do recall that he was correct on that and I really don't think you deny that and you didn't deny it in your opening statement to me, so in fairness to you I will again state your motion was decided by me on the cold record.

My other comments really reflect my own displeasure with the fact that I let these cases

get out of my grasp, and the way I was rationalizing, not for the record, rather than using those as reasons to deny your motion.

MR. ROSNICK: Prior to Giordano and Chavez, your Honor, everything pertaining to Roger Spinelli was discussed on the record, and there was never any conference off the record.

Thank you.

THE COURT: I leave you with the understanding that counsel for the Government and lead counsel for the defendants will get together and work out a schedule so that we can move these cases along with the target date being in mind that may -- if the motions to suppress are denied, we will have the trial, and that after you confer and after you all check your schedules with all the various attorneys, you will get back to my law clerk and hopefully have some definite schedule for us.

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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

- x

UNITED STATES OF AMERICA :

vs. : CRIMINAL H-298

WILLIAM R. BALOG, ET AL, :

- x

- x

UNITED STATES OF AMERICA :

vs. : CRIMINAL H-299

ROGER L. SPINELLI, ET AL :

- x

New Haven, Connecticut
June 1, 1976.

B e f o r e :

HONORABLE ROBERT C. ZAMPANO, U.S.D.J.

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THE COURT: In the matter of United States vs. William Balog, Criminal H-298, are the parties ready to proceed with respect to the motion for suppression of evidence?

MR. MEEHAN: The defendants are ready.

THE COURT: Which motion are you prepared to present this morning?

MR. MEEHAN: The motion to suppress the wire communication.

THE COURT: Are you ready to proceed on that?

MR. MEEHAN: Yes.

THE COURT: Is the Government ready?

MR. CASEY: Yes.

THE COURT: We have a motion to sever with respect to the defendart Piazza; is that right?

MR. BROPHY: I can argue it today. I really wasn't prepared to go forward, but if your Honor wants to hear it --

THE COURT: Wasn't that scheduled for today?

MR. BROPHY: Yes, it is. I didn't realize it was going to be scheduled before the suppression motion but I am ready to go forward on it.

THE COURT: If you are ready I will hear you first, actually. Your moving papers don't tell me very much.

MR. BROPHY: If your Honor please, that was

originally filed quite a while ago, and I refiled it.

At that time I represented both Mr. and Mrs. Piazza. The Government since has dismissed the charges against Mrs. Piazza, so the main reason for my motion for severance has sort of gone by the wayside.

Aside from that, just on the general thing, I feel that the case, the number of defendants that are involved in this, and the likelihood of conflict arising as that evidence can come into one case and not in another case warrants such a motion decision severing the cases, but as I say, my major argument has gone out the window at this point.

THE COURT: Very well.

Under all the circumstances, the motion is denied.

There are, of course, several cases that are relevant, and among them is U. S. vs. Finklestein, decided by the Second Circuit December 1, 1975. Of course, each of these cases in which a motion for severance is filed must depend on particular facts.

In this case there does not seem to be any presentation that would justify a severance at this time. There has been no substantial prejudice from the joint trial being demonstrated and, therefore, the motion for severance is denied, of course, without prejudice.

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Thank you.

We will proceed to the motion to suppress.

MR. CASEY: May I make a statement as to the motion to suppress the severance and return seized evidence.

The Government's response to the defendants' motion will be filed, I expect, within the next couple of days. It's finished. I have to send it to Boston to get any input John Tarrant might have in it.

Actually, the Government's response is not in the case yet, but will be by, I would say, Thursday of this week.

THE COURT: This is with respect to the physical evidence?

MR. CASEY: Yes, your Honor.

THE COURT: Are you prepared this morning to go forward on the motion to suppress the wiretap?

MR. CASEY: Yes.

THE COURT: Who is going to argue for the defendant?

MR. ROSNICK: If your Honor please, Mr. Meehan and I will each argue a portion of it. I am not going to argue very much at all. We filed a lengthy brief, a lengthy reply brief. I think the issues, the facts and the argument are clearly set forth in it.

There is one thing that disturbs me dealing

with the Henry Petersen issue, the acting Assistant Attorney General.

During pretrial discovery prior to the Giordano and Chavez decision, and the time the Court stayed the decision, I had filed motions dealing with the Henry Petersen issue as an Acting Assistant Attorney General, and I was concerned about not only the fact that he was acting assistant attorney general, but whether he was a proper acting Assistant Attorney General, and within those contexts of those discovery motions, I wanted to know who specifically authorized the wiretaps in this case.

I asked that specific question in Paragraph 30 of one of the supplemental discovery motions, and I asked the Government to identify the responsible official who authorized the wiretaps in this case, and the reply I got was the affidavit -- not affidavit. The order and the application speak for themselves and if your Honor would take a look at those, there is absolutely no question that they say that it's Henry Petersen who did the authorizing.

All Mitchell did was designate him under the Omnibus Act and said Henry Petersen as Acting Assistant Attorney General, you go out and authorize, and the order and application specifically say it was Henry Peterson.

Now, we are getting a refutation of that answer in a discovery, and I am concerned about the sanctity

of the answer and the defendant's reliance upon it, because nowhere in their brief they are saying we have to rely on affidavits after the convicted felon, which are not only an affidavit from a convicted felon, but it's a direct contradiction to the answers to this discovery, and I am concerned about that answer, and I am upset about it, and I would like your Honor to make a ruling on whether they are going to be allowed to do this.

Other than that, everything I have to say has been said in my briefs and reply briefs, and I think the issues are clear.

Of particular concern to us, that does not require any evidentiary hearing, is the Colusian issue that is raised, whether the affidavits that were filed were sufficient in setting forth to the Judge an opportunity to make a reasonable determination that other means, other reasonable means would not be successful.

There is nothing in these affidavits that allow the Judge to make a determination whether undercover agents would have been reasonable successful, absolutely nothing, and I submit that there is no more reasonable means for detection in a gambling case than the use of undercover agents and there is nothing in there.

Mr. MEEHAN: I would like to address myself to the second point in the motion to suppress that Mr. Rosnick

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just alluded to, and that's the question of whether in the authorization, the request for authorization, the Government had set forth the full and complete statement of why normal investigation means had failed or likely to fail, and I would refer the Court -- most of this is spelled out in the brief -- I want to make some brief comments, but I refer the Court to Page 10 of Agent Stankey's affidavit, and that's entitled "Need For Interception," and he sets out a number of facts, and the first is that confidential informants who had given information, which the investigation sprung from in the first place, had refused to testify in open Court, which I think has been the Government's experience in all of these gambling cases throughout the country.

Next, without the testimony of the so-called informants, it would be difficult to prove the nature of the conspiracy involved -- involving all the participants, and then the third point, Agent Stankey goes on and he begins to detail his past experience and the experience of other agents with gambling cases, and he states that based on this experience, past experience of his and other agents with gambling cases, he feels that no other investigation means would possibly get detailed sufficient information to present five or more individuals and $2000 a day.

He failed to set forth any indication in this affidavit that other investigation means have been tried, and

the one that Mr. Rosnick has raised and I think is important is this question of whether or not it would have been possible to use people to infiltrate the supposed gambling operation undercover agents as bettors, runners, layoff men, in some capacity where they could ascertain the number of individuals exceeding five, and the amount that was being bet in the particular days.

I would submit to the Court that the failure to indicate to the issuing Magistrate is fatally defective, and I would point out in the Government's cites a Steinberg case out of the Second Circuit, in their brief, and they rely heavily on Steinberg to the effect that only a minimal showing of the fact that normal investigation means have failed is required.

The Court in Steinberg criticized the affiant for the very minimal affidavit that was there. They found it was sufficient that they suggested in the future the Government prepare a more detailed affidavit.

Of course, the Government doesn't have the benefit of that opinion here since this case arose approximately at the same time that the Steinberg investigation began. But they also pointed out that defense counsel or defendants fail to offer any alternatives to the use Of wiretaps to the Court, and there is a brief statement in Steinberg to the effect that the affiant felt that no

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undercover agent could penetrate this operation, but here I would refer the Court again to Agent Stankey's affidavit, and he talks about this source Number Two of confidential informants, and that this confidential informant informed them that Nick Lanese, the supposed head of this gambling operation, was recruiting individuals, and that Lanese would require one reference, and that he would "check out" this particular person.

I would say to the Court that it seems the FBI is pretty good at penetrating organizations and I am sure that whatever means they claim Lanese may have had for checking out these references would not be sophisticated as the FBI's ability to construct some type of reference, or at least to get an individual who would fit whatever requirements Lanese is claimed to have had to get into that operation.

This is something that Steinberg didn't address. This is something that they could have done in this case, and I would submit that plus the Colusian case is set forth in form and arguments specifically In the brief and deals with the type of affidavit that we have here.

In fact, I believe a copy of the Colusian affidavit by Agent Brent is appended to the defendant's response brief indicate that the Government has failed to

make a specific showing under 2518(c).

One further point on this, it seems to me that they are arguing that generic class of case, that is, gambling, the mere fact that that is what they are dealing with here allows the issuing magistrate to conclude that normal investigation means would not suffice, but under 2516 Congress specifically included gambling as that type of crime for which it could obtain wiretap and that was Congress' recognition that this investigation means was necessary in this type of case. No question.

The Government contends these are tough cases to crack, but Congress added the specific additional requirement that besides their recognition that gambling cases are difficult to get into, and will -- you must also make this complete statement, so I don't think the mere reference or the mere inclusion of the statement that here we are dealing with gambling is tough to crack is enough.

If it weren't that, if it were not tough to crack, Congress would not have allowed to tap in the first place.

They have to go from there and present some specific statement to the Court, although we are dealing with mere conclusions of the affiant which time and time again in terms of physical search and seizures have been struck down.

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THE COURT: Any other lawyers representing the defendants who would like to argue?

Hearing none, Mr. Casey, would you like to reply?

MR. CASEY: I have a few comments, your Honor, as to the issue of the authorization of the wiretap. I think the Government's brief says what I would want to say to the Court at this time. There is simply no point in me repeating it, but I do want to make --

THE COURT: What's your reply to the opening salvo, the defendant stating that apparently the record indicates inconsistent positions by the Government with respect to various stages of discovery as to the role played by the Attorney General?

MR. CASEY: Your Honor, I think that when the issue was really joined as to the question of authorization, when the issue became clear and defined, the Government did submit to the defendants everything that they needed to determine who authorized the wiretap.

The Government makes mention in its brief that affidavits were submitted by Solin and Lindenbaum, the executive assistants to Mr. Mitchell, Mr. Mitchell himself, and Mr. Petersen.

I think that initially when the case arose before the authorization question really arose, before it

became defined, the Government was relying on the application and the order itself, but once that issue is joined, I don't think that the Government had any hesitation in supplying the information that was requested and required and that information has been with the defendants and before the Court now for a considerable period of time.

The real issue here, I think, your Honor, is whether or not the wiretap, the Government's making application for the wiretap, was authorized by an official within the United States Department of Justice, who was authorized to do so.

I think that Mr. Mitchell's affidavit, Mr. Petersen's affidavit, and Mr. Lindenbaum's affidavit make it clear that although Mr. Petersen's name appeared in the authorizing letter, that it was Mr. Mitchell himself who authorized the Government to go forward in this matter, and the one issue that I really want to raise here is the fact that the defendants in their reply brief make mention of a futher evidentiary hearing.

In my mind, your Honor, this case has to end sometime. We simply just can't go around more and more and more hearings on these matters. The Government has cited -- I have cited in my brief a number of cases in which this very issue, or an issue closely related to it, has been decided by the Court on the affidavits, and it would be the

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Government's request that we end this aspect of the case and that the Government decide the issue on the affidavits that are before it.

There is no indication simply because Mr. Mitchell was convicted of a crime that his affidavit now goes by the boards. No indication whaTsoever that he would change the statement that he made in the affidavit, nor is there any indication that Mr. Lindenbaum or Mr. Petersen would change their statement.

I think it's clear, your Honor, that the case falls under Chavez, that this is a case where although we are dealing with, as the Court said, we are dealing with a signature, and not the authorization itself.

The authorization, I think, is clear that it came from Mr. Mitchell.

In terms of the argument concerning the use of other investigative means by Agent Stankey and the other FBI agents, again, I think the Government's brief is complete.

I do take issue with the Ninth Circuit on the Colusian case. I feel that the law in this circuit is not as stringent as that in the Ninth Circuit, and it's set forth in the Steinberg case, clearly the Government has -- does not have in every circumstance to try other investigative means.

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The language of the statute says -- and the Courts have said that. I think that the affidavit gives sufficient reasons for the authorizing Judge to determine that other investigative means would be fruitless, and I would simply like to refer your Honor to a decision of this Court which I just remembered the other day, and I will let defense counsel see this decision at the close of argument today, and that would be the -- this Court's decision in U. S. of America vs. Daniel Valeriano, which was filed on, I believe, the 17th of February of this year, in which the Court deals with this very issue, and upholds an affidavit which, if anything, it is not as specific as the affidavit of Agent Stankey in this case.

Now, the defendants place a lot of reliance on the facts, the Government should have tried to place undercover agents, and I think that logic tells us that this is perhaps the most difficult means of investigating any type of criminal conspiracy.

A gambling operation, a criminal conspiracy in general are close-knit organizations. It's extremely difficult to place anybody, especially in a short period of time, within the organization itself, in a position where he could gather the quantum of evidence that's necessary to bring a federal case for gambling.

I think that the Congress foresaw by including

1955 as one of the crimes for which wiretapping could be used, that this was the case.

I don't think there has been an abuse in this case. I think that the affidavit gave sufficient reasons from which the Court could infer that other investigative means would not be successful, and really, that's all I have to say.

MR. ROSNICK: If your Honor please, when the question of whether we have to rely on affidavits of Mitchell, assuming the Court is going to tolerate them, allowing them to contradict the discovery motions, Mr. Casey suggested that we have to rely on the affidavit of a convicted felon on a crime which reflects on the credibility, and I submit we have a right to confront our witnesses, at least to the point of allowing us to take the deposition of Petersen and Mitchell, to find out exactly what did take place, because Mr. Casey's argument is clear that it was Mitchell that made the authorization here.

I submit it's anything but clear, and, if anything, the paper work that's been filed shows that it's Petersen who did the authorization, authorizing, in this case.

Now, Mr. Casey also argues that you do not have to try every other means of police work before you can get to the point where you have a wiretap. You don't have

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to try, but at least you have to tell the Judge why you're not going to try, why it wouldn't be unsuccessful.

They didn't tell the Judge why an undercover agent wouldn't work, and he argues that it's difficult.

Well, it would be very simple for them to have placed an undercover bettor, and by having a bettor, you could determine two things: Number one, the length of period of time the operation is in continuous operation; and Number Two, the amount of wagers that are being placed.

Heck, an undercover bettor can satisfy the $2000 a day himself and then you have, why couldn't the undercover bettor become an undercover runner or layoff man or a telephone book? They don't tell the Judge any of this, and I submit that you had institutional application for wiretap, and you had an institutional rubber stamp on it.

By looking at Calusian, and it's very easy to say that this application form, are uniform throughout the country, and they are using them in every gambling case, and the same thing is being said befor the Federal Judges in every case, and they are saying just because it's a gambling case, we should have a wiretap, and I think that is wrong.

Mr. Casey also argues the Valeriano case. I am not familiar with it and I don't have benefit of that

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decision to contradict anything he said.

THE COURT: Well, ordinarily, the Court would prefer to write a memorandum of decision with respect to its rulings; however, there are several considerations which compel the Court to rule orally at this time.

One, is that time is of the essence. This case has been on the docket for quite some time. We must move it along in view of my heavy schedule and my backlog in writing it would unnecessarily-delay the ruling if it took its turn in my priorities in writing memoranda of decisions.

Secondly, the law seems to me to be quite clear and no elaborate opinion is necessary.

With respect to the various claims of the motion to suppress, which relate to the Giordano and Chavez principle, the Court denies the motion to suppress.

Most of the issues have been ruled upon by other courts and the Government's brief properly sets forth those decisions.

In addition, we have the United States vs. The Consiglio case, 342, Fed. Supp. 556 in various other cases set forth in a fine law journal article written by a former law clerk of mine, which is authorizing wiretap applications under Title 3, University of Pennsylvania Law Review, Volume 123, Number 4, April, 1976.

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In that law journal article, although he is critical in several respects of the Chavez approach, he does cite many of the cases which address themselves to the very points raised by counsel, including conflicting affidavits and cases in which discovery seems to result in more information in the latter stages than the early stages.

All the cases are discussed and set forth in a comprehensive law review note, and I find that reference to that law journal article supplements the Government's citation of cases in its brief, which, of course, includes the Robertson case, 504, Fed. 2nd 289, 1974.

For those reasons the motion to suppress based on ground one is denied.

With respect to ground two, that is, that the application did not include the requisite full and complete statement as to whether or not other investigative procedures have been tried and failed, or why they reasonably appear to be unlikely to succeed if tried or to be dangerous, the Court also rejects the defendant's argument based on the cases cited by the Government.

In the Valeriano case, filed in this district on February 17, 1976, I do discuss the Steinberg case, as well as Askins in 351 Fed. Supp. and several other leading cases.

In addition, the Second Circuit in United States vs. Schwartz has recently ruled on April 20, 1976, with respect to this issue against supporting the Government's position in my case.

I do agree that undercover agents can perform valuable investigative work. In fact, under the old $50 stamp tax prosecution, which was directed towards the gamblers, the undercover agent was highly successful. However, under Section 1955 prosecution, I can see where the undercover agent would be hard pressed to gather all information necessary, and as the Government says, the quantum of evidence necessary to sustain a conviction.

You would need a visual army of undercover agents to penetrate the organization to the extent necessary, whereas, the wiretap does it much more easily and efficiently and effectively.

And as stated in Steinberg, "Wiretapping is particularly appropriate when the telephone is routinely relied on to conduct the criminal enterprise under investigation."

And also it's recognized in several of the cases that it's difficult for the Government to prove a negative.

I suppose if the Government gave its reasons for not using undercover agents, defense counsel would

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claim that they did not set forth the reasons for not using some other type of investigative procedure.

The Government's affidavit in an affirmative way, setting forth its reasons for relying on wiretapping is satisfactory and adequate under the law, at least in the Second Circuit.

I notice in Steinberg certiorari was asked for. I have not followed it through to determine whether or not cert. was granted, but under the present law, binding upon this Court, the motion to suppress is denied, based on reason two.

With respect to reason three, improper disclosure claim, that issue is also resolved in favor of the Government based on United States vs. Ianelli, 477 Fed. 2nd, 999, Third Circuit, 1973, and see also 420 U.S. 770, 1975.

In addition to that case, the remedy for the improper disclosure, if indeed there was an improper disclosure in this case, sets forth in other sections of the statute. See Section 2520.

So for all those reasons the motion to suppress is denied.

MR. ROSNICK: May I inquire of your Honor one question with respect --

THE COURT: You can inquire. I am not sure I will answer it.

MR. ROSNICK: With respect to the first issue, there the factual question of who actually did the authorizing, is your Honor making a finding it was Mr. Mitchell in this particular case?

THE COURT: I find that the Mitchell and other affidavits satisfactorily comply with the law that controls this case.

MR. ROSNICK: Will your Honor allow us to take the deposition of Mr. Mitchell?

THE COURT: The motion is denied.

MR. ROSNICK: Thank you.

THE COURT: What's the present stage of the proceedings in this case, Mr. Casey? We can go off the record to discuss this.

(Discussion off the record.)

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

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UNITED STATES OF AMERICA :

VS : Criminal H-298

WILLIAM R. BALOG, ET AL :

----------x

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UNITED STATES OF AMERICA :

VS : Criminal H-299

ROGER L. SPINELLI, ET AL :

----------x

New Haven, Connecticut
July 19, 1976

B E F O R E : HON. ROBERT C. ZAMPANO, USDJ

A P P E A R A N C E S :

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FOR THE DEFENDANTS:

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A P P E A R A N C E S: (Continued)

FOR THE DEFENDANTS:

ANDREW BOWMAN, ESQUIRE
Federal Public Defender
770 Chapel Street
New Haven, Connecticut

JOSEPH BROPHY, ESQUIRE

MR. MEEHAN: Those that are here are ready.

MR. CASEY: The Government is ready.

MR. MEEHAN: There are several matters that pertain to Mr. Brophy's client and my client.

The Government has a motion for additional voice exemplars that pertain to four individuals that our office represents and Mr. Brophy's --

MR. CASEY: The Government would stand on its papers that it previously submitted.

THE COURT: For the record, state exactly what you want.

MR. CASEY: The voice exemplar process which the Court ordered, is basically complete, there were four defendants, however, who at the time of the giving of the voice exemplars refused to give, identify themselves by name.

All of the other defendants have with the exception of Robert Cohen, who has just to give an exemplar, but I have been making strenuous efforts to contact Mr. Cohen directly and through his attorney, Mr. Hanken, I finally was able to contact him last week and he should be setting something up with the FBI soon.

At any rate, all of the other defendants with the exception of Mr. Cohen and the four defen[illegible]n

question did give their names and identify themselves at the time that they gave the voice exemplar.

The voice exemplars were given on more than one date.

THE COURT: What defendants have refused to give --

MR. CASEY: That would be Mr. Balog, Mr. Lanese --

MR. MEEHAN: Richard Lanese, Nicholas Lanese, Nicholas Messina, William Balog and Michael Piazza.

THE COURT: Who are they, Messrs. Balog, the two Laneses and Mr. Piazza?

MR. MEEHAN: Also Nicholas Messina.

THE COURT: Who do you spell that?

MR. MEEHAN: M-e-s-s-i-n-a.

THE COURT: So there are five defendants who are the subject of this motion, is that correct?

MR. CASEY: That's correct.

THE COURT: Are you seeking anything else but their names to tie into their voice exemplars?

MR. CASEY: No.

THE COURT: Just their names?

MR. CASEY: I would ask your Honor they be directed, should the Court grant the Government's motion, that they be directed to give another voice exemplar and

on this occasion include their name when giving that voice exemplar and that would complete the process as far as the Government is concerned. Thank you.

MR. MEEHAN: I'm Attorney Richard Meehan, Jr. and our office represents four of these individuals: Balog, the two Lanese and Messina.

I have filed an objection to this motion to further order for identification, setting forth some of the factors.

I would also point out to the Court that we had initially objected to the Government's first motion for voice exemplars. That objection was withdrawn in open Court when Mr. Casey represented, I believe, that this would not be submitted for spectographic analysis but the Government would instead rely on an agent of the FBI listening to the voices.

I would like to trace for the Court what happened the time that I appeared with my clients at the office of the FBI in Bridgeport. At that time we were brought into the FBI office. There were a number of individuals there. There was an FBI special agent who requested that the defendants each sign in on a piece of paper, which I refused to let my clients do, and instead noted their names.

That list was kept by the agent noting not only

my clients' names but the others present.

Then the individuals were taken one at a time to another room outside of that room, an FBI agent was keeping a list that was numbered in order of the individuals who were going in.

And inside the room there was another FBI agent keeping yet a third list again numbered with regard to the people who were at that time submitting to the voice identification.

It would seem to me --

THE COURT: It is a simple matter for someone to stand up and say, "My name is John Jones" and proceed rather than go through this elaborate process of numbers and witnesses coming in, just to establish the fact of identification of the known specimen, which was my intent to start with, that we take the known exemplar, compare it to the voice on the tape and from there determine whether or not there is a connection or nexus, whether it's admissible, because the person attempting to introduce the evidence is not an expert or for some other reason, the comparison is defective, and I will take that up at trial, but it seems to me that if the Government had immediately, which it should have done, stopped the process when the defendants refused to identify themselves on the recording, so that we would

have one concise piece of evidence of this point, and came into Court, I surely would have ordered them to identify themselves.

What's the purpose of the voice exemplars if we can't identify the known exemplar? Why should I not at pre-trial do something to avoid three or four or five witnesses at trial as far as custody, identification and other matters which could be completely eliminated if they just gave their names?

MR. MEEHAN: I think it goes beyond that. That's what the heart of our objection is. I would have no objection, and we had no objection at the time of the exemplars, of providing a means to the FBI of identifying these individuals.

We don't mean to resist the Court's order to have a known exemplar, but what I do object to is that any of the four individuals pronounce their names which-- I believe, your Honor, it's of an evidentiary nature since these taps involve, it's a claim of the Government, that the individuals on these taps are these four individuals who use the first name.

THE COURT: That's the purpose of the order. If it wasn't evidentiary and it was irrelevant, it would certainly not take up the time of the Court and your time for a process that has no bearing on the case.

What is the purpose of a handwriting exemplar to see if the defendant can write or to see whether or not it furnishes evidence for trial?

MR. MEEHAN: Simply a question of describing the physical properties, but what I am saying is, when they are asked to pronounce their name, they are now pronouncing, so there very well may be something that's on the tape that will then become testimonial character.

THE COURT: How about when an individual appears at trial and the Court orders him to stand up or put on a hat or put on a jacket or say words in open Court, and there are cases which have upheld the Court ordering a defendant to speak at trial so that a witness can see if there is a connection between what he or she has heard and this defendant.

This is the same thing, of course, it may furnish evidence against your clients. I don't think the Government is contending that they are doing this because they have nothing else to do for the afternoon. They are trying to connect the voices heard on the tape with your clients.

The same when they snip hair from a defendant and compare it to something found at the scene of a crime; the same with fingerprints. The whole purpose of the exemplar is to determine whether or not there is a

connection.

It can work both ways, it could be exculpatory, but do you have any law which states that when you take an exemplar, the defendant need not identify himself?

MR. MEEHAN: No, your Honor. I have no law specifically on that point. I can only ask the Court to distinguish Dinesio and make the distinction that Dinesio applied to the Grand Jury in their investigation powers and not to this particular point where these defendants are now about to be reached for trial.

I would only state further, your Honor, that is because we believe that the statements they would be asked to make are testimonial in character that we are putting forth this objection at this time. We will cooperate in any way to make sure that the Government has a known exemplar that it can use for whatever purposes it wants to be used.

In fact, I would accompany these gentlemen in and state myself their names on the tape as they then give the exemplars, but I would object, your Honor, to them being asked to say anything that might possibly be on those tapes. Otherwise, why go to the extent of having them read just the Declaration of Independence?

THE COURT: The Government's motion is granted. It is unfortunate that the defendants have to

go through this inconvenience again. As I stated, the proper way to proceed was to have adjourned the exemplar taking and immediately apply for an order to the Court. However, I believe the procedure was not so defective as to deny the Government an opportunity to identify the individuals on the very tapes in which the exemplars are contained, therefore, the defendants are ordered to give their names when they appear for the new test.

When will that be done?

MR. CASEY: That can be done at the convenience of the defendants, your Honor.

MR. MEEHAN: I will confer with Mr. Casey on that.

THE COURT: This case is going to trial September 14th.

MR. CASEY: We won't waste any time.

THE COURT: You have time now. Let's get it all completed.

MR. BROPHY: If your Honor please, just for the record, I am Attorney Joe Brophy, representing Mike Piazza, and I join in this motion.

THE COURT: Same ruling.

MR. BOWMAN: Are the remaining motions denied?

THE COURT: I said if the remaining motions are denied, we will go to trial September 14th.

As far as Mr. Cohen, of course, this ruling will pertain to him, too. He should give his name and then proceed to read what the Government has in mind.

It is now 11:35 and we can proceed.

MR. MEEHAN: There is one brief point that I filed --

THE COURT: As I read that motion, apparently the Government has supplied most of the information you want except the background of the persons handling the proceedings for the voice exemplars. What is the Government's objection to that? Am I correct --

MR. MEEHAN: That's correct. It's only the expertise and then whether they are expert and what their expertise is.

MR. CASEY: I'm sure that will be a question that will be raised at trial. I simply don't feel it is encumbent upon the Government Rule 15 at this time to go into the qualifications of its witnesses. There will be no secret as to who witnesses will be. That will be supplied to the defendants with the reports that I will supply them, but as for me listing their qualifications, I simply don't think that's the thing for me to do.

THE COURT: That's probably correct but I'm going to grant the motion.

You don't have to give a complete biographical

sketch. Just give the defendants an idea of whether they are running into an expert in the field or just an FBI agent with no particular expertise.

For example, it may be helpful on these voice prints, voice exemplars, problems at trial, that before the objections come in, that counsel are fairly prepared as to what their objections consist of and if they are going to challenge qualifications, let's find out about it early and get the case ready for a hearing.

If they are not going to challenge qualifications, well, okay, then we will have that hurdle. I've been doing some research on these voice exemplars and voice prints and I take it we will probably have a hearing, and let's try to clear away some of the underlying problems that defense counsel may anticipate but not know whether they are going to run into.

I think one of the questions is what type of expert are they going to face at trial. Is he a person who has had long experience with voice prints, a professor from a college, an FBI agent?

As I say, you don't have to give a full background but just generally describe the person and whether or not he has had experience in this type of evidence before.

MR. CASEY: I will state for the record, your

Honor, that this process again will not involve voice prints. There will be no professors or experts in the electronic or scientific analysis of voices. We will simply have agents of either the FBI or possibly local police officers who will have listened to the voice exemplars, listened to at least some of the tapes, hopefully all of the tapes, and then have drawn a conclusion from that comparison. That will be the process.

THE COURT: All right. That I am sure is helpful to the defendants. They can form their strategy with that knowledge but in addition, if they knew that the person testifying did not have certain expertise or, on the other hand, did have in this particular field, that would be helpful, so just generally describe the witnesses for the defendants.

MR. CASEY: We will comply with that.

THE COURT: I will take a five-minute recess and see counsel on tomorrow's case.

(A recess was taken.)

THE COURT: We will take up the motion to suppress.

MR. CASEY: If I may just initially, I received a memorandum from Mr. Bowman on behalf of Louis Varvella at the end of last week. I have not been able

to respond to it, so your Honor will find nothing in the file as to a particular response to this motion. However, many of the things are argued also by the other defendants so in that respect the Government has filed something.

MR. MEEHAN: With regard to the motion to suppress, we have filed a memorandum in support of this motion, as I am sure the Court has had an opportunity to see and also the Government has filed a detailed response and I will not take up the Court's time this morning unnecessarily going through that piece by piece. I only want to point out certain factors and have requested oral argument basically on the issue of whether we could go beneath the affidavit based on Dunnings and Colatta.

THE COURT: Set forth at least the categories of objection. That would be helpful. I want to see if your notes conform to mine because we did quite a bit of research on this over the weekend and I want to make sure I have all the categories.

If you want to rely on your brief or a particular category, that's fine, but I just want to make sure that I have all the objections.

MR. MEEHAN: There are six searches that I am concerned with. The first has to do with Nicholas Lanese, there being a search of his person and a search

of the premises at 3765 Main Street.

With regard to Nick Lanese now -- now, I will only go through each individual because two have separate reasons that I put for suppression.

The first reason that we have set forth is in paragraph 3A, that being that the command of the warrant in its language renders this per se a general warrant and thus the search, a general exploratory search, and I attempted to set forth authority and I would rely on that authority in my brief.

Paragraph 3B, which is really a spin-off of that argument relates to the fact that many of the items seized were innocuous, that is, had no connection at all in our mind with the gambling enterprise and thus buttresses what we feel to be the argument that there is an argument, so I think basically there is one issue there, whether the command and thus the items seized make this general.

The next topic for suppression, paragraph 4A, is our recitation of factors that we believe entitled us to an evidentiary hearing under Dunnings and Colatta to determine whether in fact there was any imposition on the issuing magistrate.

I would make it clear at this point, your Honor, we are not attempting to make the argument that

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Agent Stankey at all perjured himself or engaged in a fraud.

As I read that requirement of those cases, it is that there be some type of fraud or other imposition, and I would say that we are coming within that somewhat vague language, other impositions, to show that the facts that were put before the magistrate may not have actually been the true facts whether it was by inadvertence or the agent's zeal, but we are not claiming an out and out deception at this part.

Getting back to the reasons, it is those factors may not in fact be the truth, that is, that the individuals he identifies as William Balog, Nicholas Lanese, Michael Piazza and so forth were not in fact known to him as a result of those tapes to be those individuals that he made that statement thus to entitle us to challenge the veracity of the remainder of the affidavit and also that these are their conclusions not supported by probable cause, that is, the identification of these first names and unidentified males on the transcript to actually be persons involved in this indictment, and that as a result of those bare conclusions the bulk of the probable cause in this affidavit is really not supported or the bulk of the facts that claim the proper cause is not supported.

Next, the information received from the informant should not be credited because there is not sufficient indicia in the affidavit to support the reliability of the informant. We are not challenging reliability of this information but merely whether in fact the reliability of this informant has been established.

Again, I rely on the brief, your Honor. I think the affidavit itself has a great deal of bearing, as I have set forth in my argument.

Of course, last and only to preserve the record, we have incorporated the motion to suppress the wire communication here, claiming that under Wong Sun, if that motion to suppress had been granted that this would now be tainted by what would have been an illegal search and seizure, and even though your Honor has ruled against us, I feel I have to put that ground forth to protect the record on appeal. That is with regard to Nicholas Lanese.

With regard to Richard Lanese, there was a search of 177 Walnut Street in Milford, Connecticut --

THE COURT: This is in respect to the agent answering the phone?

MR. MEEHAN: That's correct.

Again, paragraph 3A, 3B, 4A, 4B and 4C relate

to those claims of the general warrant and then the veracity and the bare conclusion.

4D is again the claim about the informant that's incorporated in the Nicholas case and 4E is again our claim of the invalidity of the wire tap and paragraph 5, as the Court pointed out, is the situation that we claim was the seizure of admission.

Then with regard to William Balog, our motion to supprise only addresses the warrant for the property at 3880 Main Street in Bridgeport. We discovered through Mr. Casey's reply brief there was in fact a warrant for Mr. Balog's person. We were mistaken on that. Mr.Balog did not give to us that warrant and I would take responsibility for that.

I would ask the Court to allow me to incorporate the search of Mr. Balog's person within the ambit of my motion to suppress for all the grounds I have set forth in that motion.

THE COURT: Yes.

MR. MEEHAN: I believe this is a duplicate of the Nicholas Lanese motions.

THE COURT: Right.

MR. MEEHAN: So I am dealing with those six searches and the grounds are set forth.

THE COURT: Yes.

MR. MEEHAN: With regard to Richard Lanese, if we can get back to the last issue, on the seizure of the conversations, I spoke to Mr. Casey outside. The facts that I have set forth there come from a report that was submitted to us as a result of discovery and it is an incident report by Special Agent Danahar at the time of the search of Richard Lanese's property and I would rely on those factors.

Mr. Casey does not have that report available to him because that part of the file may in fact be in Boston and could not stipulate. However, to aid the Court so that we don't have to go through an evidentiary hearing, because the facts are pretty clear and my claim for relief is based on the facts in that report, if he would be willing to stand on that report as it exists in the Court file, if that would be enough for the Court, I think it would obviate the need for putting testimony on that one ground.

THE COURT: What is your reaction to that, Mr. Casey?

MR. CASEY: I am willing to stand on any facts to which I replied in the memorandum in support of their motion. I am not willing at this point to stand or stipulate to any facts and any other records, but I did respond to the facts as forth in the motion and I,

of course, would be willing to stand on those facts.

MR. MEEHAN: I don't recall that necessarily contradicts the facts. It was just a question of whether or not we were entitled to relief under the cases that I have cited. I can put on Mr. Lanese, your Honor, to establish some of the factors here. There is a disagreement between Mr. Casey and myself as to who has the burden on this particular search.

MR. CASEY: It is my assertion that there being nothing in the command of the warrant authorizing these individuals to seize conversations, you don't need an --

THE COURT: Exactly what conversation, the conversation with or the statement by which Richard Lanese -- that he often used the name Dave when answering the phone?

MR. MEEHAN: Came as a result of the officer answering the phone and conversing with someone who asked to speak to Dave. These are the facts set forth --

THE COURT: Give me an offer of proof as to Richard Lanese's testimony and we will proceed from there. What would he say if he took the stand?

MR. MEEHAN: He would say approximately five police officers not in uniform and not with guns drawn or anything of that nature came to his apartment to

execute the search, that they asked him to remain in the living room, told him he could not leave the living room and then proceeded to search, that an agent in the bedroom turned up later to be Trooper Simmons, answered the phone. Mr. Lanese only heard the phone ring.

He was not present in the room when the Trooper answered the phone. Trooper Simmons then exited from the bedroom into the living room and informed him there was a phone call for an individual by the name of Dave and asked him whether he in fact used the name Dave.

At that point, he then replied to him that he did use the name Dave and he was then advised by Special Agent Danahar that he had a right to remain silent and so forth, after he had made this admission.

He would also testify, your Honor, that at that time he thought he was under arrest, that his movements were so restricted --

THE COURT: It is your claim that it was not a spontaneous --

MR. MEEHAN: This has all the --

THE COURT: He was actually questioned --

MR. MEEHAN: He was in fact questioned. This was a response and this was a custodial situation. It had the indicia of the custodial situation even though they left and did not take him into custody at that time.

THE COURT: Do you challenge that offer of proof as to the facts, that is, that the officer asked him, that is Richard Lanese, whether or not he had ever used the name Dave?

MR. CASEY: Your Honor, the memorandum in support of the motion simply states that as a result of this deception by Trooper Simmons, that by answering the phone, Richard Lanese stated that he often used the name Dave when answering the phone.

Now, Mr Meehan has told me about a report which I have never seen and it's not in my files in Hartford. It may be in the files in Boston. I simply don't know. So I am somewhat at a loss.

THE COURT: All right. I don't think the argument addressed to the agent answering the phone has much substance, but on its face the argument advanced with respect to questioning the defendant without his rights may have some substance. Where do we go from there on that? Have you brought the agent down here today?

MR. CASEY: No, your Honor.

THE COURT: Maybe I should have a hearing on that.

MR. MEEHAN: I wonder if we might reserve this question to the point of trial where the agent might

testify and then a voir dire might be the most expeditious manner.

THE COURT: That is a very good suggestion. It doesn't seem it will take much time at trial. Your offer of proof is really rather a concise and short one on this claim.

In the meantime, Mr. Casey can try to find his report to see if the agent questioned him before giving him the Miranda warnings and while he was in the position where the agent had said to him, "You cannot leave the room," and various other matters that you mentioned.

On the other hand, facts may be to the contrary, so on the Richard Lanese motion to suppress statements given during the search of 177 Walnut Street at approximately 3:11 p.m., the Court will reserve and hold a hearing at trial.

MR. MEEHAN: As I pointed out to the Court, it is my intention to rely basically on the authority I've set forth in the brief but I figured it would expedite things if we actually appeared before the Court to indicate whether evidentary hearings would be possible or not, and I think I have set forth facts that we claim under the cases in this circuit that entitle us to have a hearing as to the veracity.

My idea, the way you approach this, your Honor,

if a defendant is able to show under this rule some falsehood or some other imposition, a chink in the armor of this affidavit, he is entitled to pierce it and interrogate the affiant.

THE COURT: Where are the chinks in the affidavit?

MR. MEEHAN: I claim, your Honor, they arise in all of the statements from Agent Stankey that relate to the seizure of conversations where he says, and I give specific examples and paragraphs, my motion to suppress, where he says on such and such a date, such and such a time Nicholas Lanese called William Balog and discussed the following information.

I have asked the Court to look at the logs, which I understand are part of the file in the Clerk's Office here.

For instance, on December 17th, 1971, at 2:34 p.m., this is from the affidavit, William Balog operating telephone number 372-5434, received a call from Nicholas Lanese at which time they allegedly discussed aspects of this gambling operation.

Now, if you go to that date in the transcript you find a conversation at that time on that date between an individual identified in as Bill and "U.M." which I presume means unidentified male.

Now, you're left with the point that Agent Stankey has somehow concluded without giving the magistrate any basis for this conclusion that Bill is William Balog and that unidentified male is in this instance Nicholas Lanese. You come down to one or two problems. Either he has just made this claim himself, kind of a leap of faith and if so, this is defective under Nathanson and that line of cases dealing with a conclusion by the affiant without any probable cause or-- excuse me -- giving that same line of cases he may be making this conclusion and this constitutes that type of imposition on the issuing magistrate because when the magistrate looked at the affidavit of Stankey, he must have assumed that Stankey had reasonable grounds to believe that Bill Balog and Nicholas Lanese were actually involved in conversation, not knowing that the transcript did not and wouldn't mention those two individuals, and I think it's unfair to that issuing magistrate to be led to believe it was Nicholas Lanese and William Balog and Michael Piazza and Charles Suglia, when actually the Government had at that time from the record were first names and suspicions as to identities, and I think that something had to be included there, if not the magistrate was imposed on and this search can fall under Nathanson and those cases.

That in essence is the argument on that point.

THE COURT: Do you represent Piazza?

MR. BROPHY: Yes. I represent Mr. Piazza.

Two things, your Honor. I assume the ruling still stands that anything that's decided as to any particular defendant applies to all in those cases that it does apply. In other words, the contention of Mr. Stankey's presentation to the magistrate, I would stand on also, although I have not --

THE COURT: Yes.

MR. BROPHY: Also, your Honor, for some reason, and this is just a matter of record, I am sure it's confusion, I received about half the pleadings in this case every once in a while. I've never received the Government's reply to any of these briefs. Indeed, I didn't even get the calendar for today although I had received --

THE COURT: Let's straighten that out. Do your notes indicate that a copy had been sent to counsel?

MR. CASEY: I have been sending copies of my responses to all counsel regardless of whether they are moving counsel or not.

MR. BROPHY: May I ask where you have sent them?

MR. CASEY: Certification on my memorandum

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indicates that copies of the foregoing responses were mailed on the 7th of June to all counsel of record.

MR. BROPHY: I've been getting some pleadings and then I don't get other pleadings. It might have something to do with in the middle of this case I did go out on my own, left Goldstein & Peck.

Some stuff has gone to Goldstein & Peck.

THE COURT: Well, first of all, I think immediately after this hearing today, you should give the Clerk your address where the mail would reach you directly and also Mr. Casey should sit down with you and not only take that information but go over the items that you do not have and immediately give you copies.

As I say, if these motions are denied, trial will be on September 14th so this should give you enough time to get an up-to-date file.

MR. BROPHY: That's true, but as I -- we have been cooperating fairly well so I have been managing to get -- right now --

MR. CASEY: I will give him a copy right now.

MR. BROPHY: In my brief in the motion to suppress, I have gone over quite a big of the material your Honor has already ruled on and obviously we are not going to go over that again.

The main part for this argument starts in my

brief at page 33 and thereafter.

Basically, in the affidavit that was presented for the search warrant, the only reference that was made to my client, Mr. Piazza, or to his address, which is of more concern here, 45 Grove Street, a paragraph on page 14 of the affidavit, and basically, your Honor, if I can read that quickly, it's a short paragraph, and it says that during the period of interception an outgoing call was made by Spinelli at apartment C3, 215 Barnum Avenue, Bridgeport to Mike, a telephone number of 334-5278 listed in the Southern New England Telephone Company records to Mike Piazza, 45 Grove Street, Bridgeport.

During this conversation, Spinelli provided a sports line to Mike and asked him if he had received a line from his people yet.

Subsequently Spinelli, while in conversation with another individual regarding a specific football game, stated, "I don't have them. You will have to bet with Mike Piazza." That's a total reference to 45 Grove Street. We don't know when that -- by way of this affidavit, we don't know when that interception was made.

Obviously it had to be made between the 17th and the 20th which in the beginning of the affidavit states when all the interceptions were made.

We don't really know from that who answered the phone, whether it was Mike Piazza who answered the phone, Mike Anybody or even anybody named Mike.

Obviously the phone call was made to a Mike. Whether he answered the phone, I don't know. There was no reply made as to whether he even knew who this guy was who was calling.

There is also no indication that there is any betting paraphernalia, betting slips, machines or anything else at 45 Grove Street in that paragraph, nor is there anything else in the whole affidavit that would indicate that there was any betting paraphernalia not only on the date of the interception, that we don't know what it is, but more importantly on the date that the search took place.

I have done extensive briefs on this and there is no reason to go over it again.

Basically I am indicating as to the search at 45 Grove Street, the affidavit is stale, that it's based on hearsay with no other collaborating evidence and there is no tying in whatsoever of any of this stuff sought after being at 45 Grove Street.

I would say finally, without going over it again, the whole brief, as I am sure your Honor has read it, indicates that during that search one marijuana

cigarette was found in a bedroom and a State police officer being present arrested Mr. Piazza for possession of marijuana.

The arrest was based upon this very affidavit and the search. He was present during the search. In a similar motion made before the State Court concerning this very same affidavit, a State judge ruled that he felt there was absolutely not probable cause to the issuance of a search warrant for 45 Grove Street on the basis of the information set forth in this affidavit. Based on that rule that the suppression of marijuana had to be granted and the case was dismissed.

I have nothing further.

MR. BOWMAN: On behalf of the Defendant Varvella, I have incorporated the arguments of Mr. Meehan and Mr. Brophy in my attack on the search warrant for 37 Boston Terrace, Bridgeport, Connecticut.

What I am most concerned about is whether I can have a representation from Mr. Casey whether or not anything was taken from the person of Louis Varvella on January 1st, 197[illegible]. There seems to be some -- I am not sure whether there was something taken or there wasn't. Maybe Mr. Casey could help me out.

MR. CASEY: The inventory was attached to our moving papers and that will indicate there was nothing

taken from his person.

MR. BOWMAN: Was there anything taken from his person? I will accept the Government's representation.

MR. CASEY: I can't represent flat yes or no. I don't have the inventory, the materials with me.

THE COURT: Do you have anything in your files that would indicate that anything was taken from Mr. Varvella?

MR. CASEY: The inventory, which was left, indicates that all items seized were taken from places on the premises. There is nothing on the inventory indicating a search of a person.

THE COURT: Mr. Bowman, you will proceed on the theory that nothing was taken from the person of Mr. Varvella. If there is a change, you may have leave to file a motion addressed to those items within seven days. The Government shall inform you within 24 hours whether or not anything was taken from Mr. Varvella. If you do not hear from the Government, you may assume that nothing was taken. If you do hear from the Government that something was taken within the 24 hours, well, then, you may take appropriate action.

MR. BOWMAN: Thank you. With respect to the remaining arguments I rely on co-defendants arguments and the brief.

THE COURT: Anything further from the defendants?

MR. MEEHAN: I think it should be noted for the record, your Honor, that our office has filed this motion to suppress in a brief and I have made available to other counsel upon their request both of these indictments, copies of that motion and I understand that some counsel have adopted bits, but I want the record to be clear because they may in fact be relying on us being the moving party and I would like the Court to recognize that they have that understanding.

THE COURT: I so recognize.

MR. CASEY: Of course, your Honor, it's somewhat difficult to conceive that another defendant taking advantage of a search at a particular premises --

THE COURT: To the extent relevant I will assume that all defendants have joined in with respect to each other's motions obviously. If it's not relevant to their case, the ruling wouldn't apply but I assume that counsel in an effort to expedite the matter before the Court to an extent have some implied agreement that a ruling that would affect one defendant would affect another if that ruling is pertinent to the latter's case.

Obviously, if I suppress an affidavit as insufficient with respect to one defendant, it would be

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insufficient as to another if it makes any difference to that other defendant.

Let's got to the two points that caused me the most concern. That is with the defendant Piazza.

I should go back and say Richard Lanese's claim that he wasn't warned before he was questioned, of course, that's reserved for trial.

How about Mr. Piazza being identified as Mike in light of what counsel has stated, Mr. Case? Why don't you focus on that point at this time?

MR. CASEY: I have responded to that point, your Honor, in my brief. It's argument Roman numeral VII, starting at page 11. As the Government concedes in its memorandum, the material in the affidavit is certainly not overwhelming. I don't think anyone would go so far as to say that.

I do feel, however, your Honor, that it was sufficient for a finding of probable cause. I think that the affidavit has to be taken and looked at as a whole. The affidavit clearly shows a well organized extensive gambling operation. It shows that on at least one occasion Mr. Spinelli had given the line to a Mike at a number and at an address listed to Michael Piazza.

The affidavit also indicates that in a subsequent conversation, Mr. Spinelli, I believe, indicated

he couldn't handle something and that the bettor or person would have to do it with Mike Piazza.

I think that the evidence, the information in the affidavit again, it certainly is not overwhelming, it may be borderline, but I think the fact that the magistrate did find probable cause stands in good stead here and looking at the affidavit as a whole and that those precise pieces of information which relate to that address at 45 Grove Street, I think there was sufficient information present for a finding.

As to the dates, I don't think that the information was stale, your Honor, because although Agent Stankey did not state for each particular call that he used in the affidavit when that call was received, we are working within finite boundaries and Agent Stankey did indicate on the 7th page of his affidavit all of the background information as to the electronic surveillance, that the electronic surveillance was instituted on December 16th and when it terminated, so the magistrate did have boundaries and a time frame in which he could see and judge the freshness or staleness of this information, and I think that due to the fact that the outside limit could have been only December 16th, a little more than two weeks, I don't think that the question of the staleness or freshness or -- their claim of staleness

of the information really has much merit and I have covered these points I believe in my memoranda, your Honor.

I would be happy to respond to any other particular question that may be troubling you.

THE COURT: Did the State Court judge issue a written ruling?

MR. BROPHY: No, your Honor, he did not.

THE COURT: Did he rule from the bench?

MR. BROPHY: Yes.

MR. CASEY: On that point, your Honor, we have now -- Mr. Brophy did not supply either the Government or the Court with a transcript of that proceeding. We really have no basis upon which to judge what that other judge made his decision on. Certainly a gambling affidavit may not stand up in a drug case. I simply don't know. I don't think by any means the fact that the State Court nolled a possession of marijuana charge --

MR. BROPHY: They did not nolle it. It was a dismissal.

MR. CASEY: I am sorry, I misspoke myself. Dismissed the possession of the marijuana charge when here we are faced with federal gambling charges, I don't see the bearing of that.

We do not have sufficient information here either in Mr. Brophy's supporting memorandum or in any form to really make a judgment on what the State Court judge was looking at.

MR. BROPHY: May I answer that?

THE COURT: Yes.

MR. BROPHY: If your Honor please, I listened to the Government's argument and I keep hearing it over and over again in my mind, that the Government is saying that as a result of this affidavit there is a suspicion that Mr. Piazza is involved in this gambling operation.

There may well be a suspicion that Mr.Piazza is involved in this gambling operation from that one paragraph. The problem is we are not talking about whether we are suspecting somebody or even arresting that somebody. We are presenting an affidavit to conduct a search at 45 Grove Street and there is nothing in there which was the basis of the ruling in the Circuit Court by Judge Spillone

There's nothing in that affidavit that indicates that anything was located at 45 Grove Street and, therefore, nobody should have been there searching it and the warrant shouldn't have been issued to search 45 Grove Street, which is why he threw it out.

The arrest was made because something was found incidental to a search that was being conducted as a result of a search warrant.

Now, obviously if they are searching for something else and they find some criminal paraphernalia, they are entitled to arrest for that. If it's a legal search, to begin with, but if he didn't belong there because the search warrant is no good because it states nothing in there that would lead anybody to believe that there was any betting paraphernalia of any kind at 45 Grove Street at any time, and more specifically on the 1st of January when the search was conducted.

THE COURT: What was seized?

MR. BROPHY: I believe there was some books and some betting slips and some other stuff seized.

THE COURT: All right.

MR. CASEY: A very brief response. You can hardly separate, as Mr. Brophy would, the fact that Michael Piazza through the information in the affidavit is obviously engaged in gambling. I think the clear inference there, that's clear for the magistrate and anyone else, if someone is engaged in gambling, there's going to be gambling records and paraphernalia. That's the theme that runs throughout the affidavit.

THE COURT: Very well.

MR. CASEY: I don't know what the State judge made his decision on and really, I think, that if the facts are as the defense states, we should have something here showing, a transcript of that hearing or something. We have nothing.

THE COURT: Very well.

With respect to the motion pending before the Court, the Court is prepared to rule. Ordinarily I would prefer to write it, but time is of the essence.

This case is very old on our docket and the Court must expedite it as it sees best.

Secondly, some of the points raised really are clearly settled in the law and I am not sure that a written opinion would be anything but duplicitious of what other judges have written on the same point.

The points of concern are either reserved for trial or will be discussed by the Court at this time.

The Court will deny the motion to suppress. The main complaints really are answered not only by cases in this Circuit but by cases in other circuits.

For example, on the general exploratory search claim, the case of U.S. versus Martri, 421 Fed. 2nd, 1263 Second Circuit case is relevant.

U.S. versus Scharfman, 448 Fed. 2nd 1352, another Second Circuit case is on point.

U.S. versus Dzialak, 441 Fed. 2nd 212, cert. was denied.

U.S. versus Autobridge, 375 Fed. Supp. 418, 1974 case from the Southern District is on point.

With respect to the veracity of the affidavit attack, the Court agrees with the Government and cites U.S. versus Colatta, 413 Fed. 2nd, 1343 at 1345; U.S. versus Dunnings, 425 Fed. 2nd, 836 at 839 and 840; and the U.S. versus Steinberg, 425 Fed. 2nd, 1126 at 1130 and following.

It also is pertinent to note U.S. versus Pond, 382 Fed. 2nd at 556 from the Southern District and 523 Fed. 2nd 210 at 214 in the Second Circuit.

The lack of probable cause claim with respect to Stankey is not very troublesome to the Court. However, the close point with respect to the defendant Piazza is one of some concern to the Court.

It is a bit troublesome; however, I do feel there is enough in the context of the entire affidavit to give the magistrate grounds for finding probable cause.

After all we do have the name, at least a first name. It's traced to a Michael Piazza by telephone and then we have someone who is in very deeply in the affidavit referring to that very person by Michael Piazza

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and Mike Piazza.

That in the context of the entire affidavit in my opinion would be enough to justify the magistrate issuing the warrant. The recent case of Mapp versus Warden, 2nd Circuit, March 16th, 1976 from the Second Circuit is helpful on points raised concerning the probable cause on the search warrant, and also U.S. versus Canestri, Second Circuit case decided last year and reported at 518 Fed. 2nd 269.

Some other cases that might be helpful, U.S. versus Fully, 441 Fed. 2nd at 755.

Of course, with respect to the reliability of the informant there is U.S. versus Sultan, 463 Fed. 2nd, 1066 at 1068 to 1069, Second Circuit, 1979, as well as the Canestri case which I already gave you.

We straightened out the fact that there was a warrant for the search of Balog's person so I won't go over that. With respect to the items seized, the radial clock, et cetera, that really doesn't, even if valid, throw out the affidavit or the whole case. It may affect their admissibility.

In fact, if you want them back I suppose the Government will give them back to you if they are not relevant. For that you can review some of the cases including the Russo case at 250 Fed. 2nd -- Fed. Suppl.

250 Fed. Suppl. at 55 and 57 and I believe Judge Anderson in the Smith Act case in this District had the problem where many items were seized, including tie pins, if my recollection is correct, and other items as well as relevant materials, and I believe he denied a motion to suppress but ordered the return of items that did not appear to have any basis in the evidence.

You might be aware that the Supreme Court just very recently in Andressen versus Maryland on June 29th of this year, and you can find the substance of that opinion in 19 criminal law 3183, wrote on the general warrant principle, and I believe that case would be helpful and I do cite it in support of my ruling.

I believe I did give you the Mapp versus Warden ruling by the Second Circuit, which is quite recent, which discusses the informant's reliability issue.

I think I have reviewed most of the cases that the Court has relied on, so the motion is denied, with the Court accepting the Government's response in each and every respect, the Government's citations of law and my own citations of law which I set forth.

The only matter remaining then for trial is Richard Lanese's motion and I would appreciate if counsel could get together prior to trial to at least establish what the facts were if a stipulation can be entered into.

If not, at least find out where counsel are going to have a different point of view with respect to the facts so that when I have the hearing, it will be a concise hearing right to the point.

Pre-trial briefs, of course, will be very helpful and the Court would appreciate it. I hope counsel can get together and work that out so we will move smoothly at trial.

MR. CASEY: We shouldn't have any trouble. I simply could not stipulate today because if Mr.Meehan had had the document, I probably could have but not ever having seen it, I simply can't.

THE COURT: What do you say, Mr. Meehan, that document's dated?

MR. MEEHAN: It was a report by Special Agent Danahar of the search they had conducted at that time. We were given it in our discovery. I left that part of the file in my office.

THE COURT: What do you recall it stating?

MR. MEEHAN: I recall it stating that Trooper Simmons received the phone call, answered the phone when it rang and an individual said, "Is Dave there," and he said, "This is Rich," that is Trooper Simmons said, "This is Rich," and the individual hung up and Simmons went out and confronted Richard Lanese --

THE COURT: I am sorry, it's not stated in that document. Th . is Mr. Lanese's recalling that trooper confronted him with this fact and Richard Lanese stated at times he uses Dave.

See what the facts are from the Government's point of view and try to present a stipulation of facts. Of course, if that's impossible, have a hearing. All I am saying, as much information as I can get at pre-trial will help me get prepared for an issue raised at trial, and I appreciate counsels' efforts.

I would be remiss if I did not say I was impressed with the quality of the briefs submitted in this case by the defendants' counsel. It showed a tremendous amount of work. The briefs were well written and some troublesome points raised, but I think the Government's brief also was well done, and just have the better of all the arguments.

MR. MEEHAN: One other point that I find that I must bring forth at this time. I have explained to Mr. Casey that we were raising this. The Court is aware that we represent four of these individuals. At this point I find that because of a conflict that will arise at the time of trial, we must ask the Court to remove us as counsel for three of the individuals and I have a motion to withdraw. I have given it to the Clerk

and I would only point up that at the time that these gentlemen were arrested and then presented before Judge Clarie, my father was present with them on that day and indicated to Judge Clarie that so far as he could see at that time a conflict would not exist for his representation in preliminary matters, pre-trial motions, but at the time of trial conflict might exist and if the case were to go that far, that he might find he would have to withdraw.

THE COURT: Do you have the transcript on that because my recollection is that -- I am not sure it's this case -- but I have never permitted counsel to represent more than one defendant unless I have very carefully and thoroughly gone into the matter of possible conflict of interest and if there was the slightest possibility, I wouldn't allow it, because what might happen now is another delay and I am not going to delay this trial any longer.

What is the conflict? What conflict has arisen now that you didn't know about through all this discovery and the case has been pending for years, is the conflict you are now going to trial?

MR. MEEHAN: No, it's not that conflict. They have asserted matters in their defense that would be opposed to each other's interests.

THE COURT: Of course, that's what a conflict of interest is. Didn't you know that when this case started?

MR. MEEHAN: Your Honor, at the time that we initially entered into it, it did not appear that way but we noted for the record before Judge Clarie, who accepted that notation and allowed us to represent all four and we have represented them to the point of disclosing the preliminary issues.

THE COURT: Can you people afford attorneys or does the Court have to appoint them?

MR. MEEHAN: One individual as far as I know cannot afford an attorney. Richard Lanese.

THE COURT: With respect to Nicholas Messina, is he here?

MR. MEEHAN: They are all here.

THE COURT: Are you able to retain an attorney?

MR. MESSINA: Yes.

THE COURT: Have you retained one?

MR. MESSINA: Yes, I have one.

THE COURT: What's name?

MR. MESSINA: Attorney Lawrence Merly of Bridgeport.

THE COURT: Would you tell Mr. Merly what's

been going on here and that he is to immediately file an appearance and that this case is going forward September 14th. Would you tell him that?

MR. MESSINA: Yes.

MR. MEEHAN: Richard Lanese will have to engage the services of a Public Defender. Mr. Balog is present and he has intentions of seeking private counsel but I don't know --

THE COURT: Mr. Balog, have you obtained an attorney to replace Mr. Meehan?

MR. BALOG: Not as yet, your Honor, but I am contemplating getting a different counsel. I don't know if I am going to get a Public Defender or private counsel.

THE COURT: Well, one week from today you are to report to this Court and appear in Court and let me know if you have your own attorney or whether you wish me to appoint an attorney. If you have your own attorney, would you tell him that the September 14th date is a firm one and that if he has any preparations to do for this trial, to get it done by September 14th.

If you are going to have a Court appointed attorney, I will so instruct that an attorney will be appointed, but one week from today at 10:30 you are to report to the Court as to your progress with respect to

an attorney.

MR. MEEHAN: I would also state, your Honor, we will make available all of the pleadings in our file and aid those attorneys as best we can without disrupting--

THE COURT: The file is fairly adequate for any attorney to prepare this case in the amount of time that he has. There is quite a bit of time before trial.

Also, the Government has been more than cooperative in this case. It's practically been an open file case, hasn't it?

MR. CASEY: Just about, your Honor. Everything has been available.

THE COURT: All right. With respect to Richard Lanese, where does he live?

MR. MEEHAN: Milford.

THE COURT: Do you represent that based on your knowledge and experience with him that he would need Court appointed attorney?

MR. MEEHAN: It's my understanding he would. He's employed but his employment brings enough to meet his expenses. He could not, from my conversations with him, afford private counsel.

THE COURT: Is he here?

MR. MEEHAN: He is present also.

THE COURT: Mr. Richard Lanese, can you

afford an attorney?

MR. RICHARD LANESE: That I know of --

THE COURT: I take it then that you feel you don't have the assets to hire an attorney for this case?

MR. RICHARD LANESE: Yes.

THE COURT: You are employed?

MR. RICHARD LANESE: Yes.

THE COURT: Do you own any property?

MR. RICHARD LANESE: Yes.

THE COURT: What do you own?

MR. RICHARD LANESE: My own home.

THE COURT: Is there a mortgage on it?

MR. RICHARD LANSES: Yes.

THE COURT: Do you own any cars?

MR. RICHARD LANESE: Own a car, a '68.

THE COURT: What are your cash assets?

MR. RICHARD LANESE: What I --

THE COURT: Assets, how much cash do you have available to hire an attorney?

MR. RICHARD LANESE: I don't have any, your Honor.

THE COURT: Mr. Bowman, you are tied up with another defendant?

MR. BOWMAN: I represent the defendant Varvella.

THE COURT: I am not going to appoint you or even suggest that you handle Mr. Richard Lanese's case. Mr. Richard Lanese will have to file a financial affidavit and we will appoint an attorney. I will have to check the list. I will see if I can get someone from Milford or Bridgeport.

MR. CASEY: I will represent to the Court that as soon as I -- if I am notified who the attorneys are that will actually be representing these individuals, I will contact them to find out if there's anything in particular that they will need from the Government to try and avoid any more discovery motions or anything like that.

THE COURT: Very well. That would be helpful and if there are any problems, which I doubt because after looking through this file, it's been practically an open file case and counsel have explored every possible avenue, it seems to me, for motions and for information to help in their defense. All right.

I will appoint a lawyer for Richard Lanese a week from today and we will find out whether Mr. Balog has his own attorrey and we will appoint for him and we will reserve the one motion for trial, but, in any event, please let the word go out that this case will be scheduled for trial on September 14th, 1976 and there will

no continuances permitted. Counsel will be ready. If they have State Court commitments, to iron it out now and if there is any problem, to contact me and I will contact the State Court judge, but the word must go out that this case is going to be scheduled firmly for September 14th, 1976.

(A recess was taken.)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

----------x

UNITED STATES OF AMERICA :

Plaintiff :

VS. : Criminal H-298
H-299

MICHAEL PIAZA, NICHOLAS LANESE, :
RICHARD LANESE, NICHOLAS MESSINA
and WILLIAM BALOG :

Defendants :

----------x New Haven, Connecticut
September 13, 1976

B E F O R E : HON ROBERT C. ZAMPANO, USDJ

A P P E A R A N C E S :

FOR THE GOVERNMENT:

JOHN R. TARRANT, ESQUIRE
Assistant U.S. Attorney
1703 John W. McCormack
Post Office Building
Boston, Massachusetts

FOR THE DEFENDANTS:

CHARLES HANKEN, ESQUIRE
Bridgeport, Connecticut

RICHARD MEEHAN, ESQUIRE
Bridgeport, Connecticut

CHARLES GRAHAM, ESQUIRE

THE COURT: We will take up H-298. It is my understanding that Nicholas Lanese, William Balog, Louis Mastro and Charles Suglia will plead nolo contendere to H-298 and the record should also note that the Court is aware of the plea negotiations in this case that counsel for the defendants and counsel for the Government have spoken to the Court about the plea negotiations, and that based on the representations made to the Court during our conference, the Court is satisfied that it would go along with the agreed upon recommendations of sentencing if the presentence report supports those representati[illegible]

If the Court finds that it cannot go along for any reason with the suggested sentence, I will notify counsel and explain why it cannot go along and the defendants may withdraw their pleas of nolo contendere.

The Court should also place on the record that it is fully aware of the factual background of these cases, having had numerous motions before it over a period of years.

Finally, the Court over the Government's objection will permit these defendants that I just mentioned to plea nolo contendere because of the jeopardy assessments that are presently pending before them.

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With respect to Richard Lanese and Daniel Levin, the Court has fully discussed the plea negotiations with counsel and Alford pleas, that is, pleas would be entered under the principle established in North Carolina versus Alford.

With respect to Nicholas Messina and Walter Hardy, those two defendants will go to trial tomorrow, a jury is coming in and counsel has been notified.

There will be no continuance and the two defendants will be put to trial tomorrow.

With respect to the remaining two defendants, Max Gordon and Daniel Ricco, those cases have been disposed of.

The best way to proceed is to take the case of Nicholas Lanese, William Balog, Louis Mastro and Charles Suglia together.

I'm going to ask a series of questions and I would like the defendants to respond individually to each question. We will start with Mr. Lanese, Mr. Balog, Mr. Mastro and then end up with Mr. Suglia.

Do you fully understand the nature of the charges against you, Mr. Lanese?

MR. NICHOLAS LANESE: Yes, your Honor.

THE COURT: Mr. Balog?

MR. BALOG: Yes.

MR. MASTRO: Yes.

MR. SUGLIA: Yes.

THE COURT: Have you had a full and adequate opportunity to discuss with your attorneys the nature of the charge against you and the effect of your nolo contendere plea?

MR. NICHOLAS LANESE: Yes.

MR. BALOG: Yes.

MR. MASTRO: Yes.

MR. SUGLIA: Yes.

THE COURT: Do you have any questions you would like to ask me?

MR. NICHOLAS LANESE: No.

MR. MASTRO: No.

MR. BALOG: No.

MR. SUGLIA: No.

THE COURT: I am going over the charge against you in this indictment after which I will ask you certain questions.

The Government contends that if this case went to trial it could prove that from on or about the 17th day of December, 1971 and continuing and including the first day of January, 1972, each of you were engaged and were involved in an illegal gambling business, to wit: bookmaking business and this illegal gambling business

was in violation of the laws of the State of Connecticut and this business involved more than five persons who conducted, financed, manned or supervised, directed or owned a part of this business and the business has gross revenue of $2,000 in a single day.

Is it my understanding that you do not wish to contest these charges by going to trial?

MR. NICHOLAS LANESE: Yes.

MR. BALOG: That's right.

MR. MASTRO: Yes.

MR. SUGLIA: Yes.

THE COURT: You understand that you need not change your pleas of not guilty to nolo contendere, that your pleas of not guilty will remain on the record. We have a trial starting tomorrow and you will be able to confront, cross-examine the witnesses against you and you will not be compelled to incriminate yourselves and if you would wish, you could call your own witnesses but by your pleas of nolo contendere, you are waiving those constitutional rights; do you understand that?

MR. NICHOLAS LANESE: Yes.

MR. BALOG: Yes.

MR. MASTRO: Yes.

MR. SUGLIA: Yes.

THE COURT: Do you understand that upon your

plea of nolo contendere, the Government will make certain representations against you and if those representations constitute proof of the essential elements of the crime and neither you nor your attorney challenges those representations, then I'm going to find you guilty of the charge.

Do you understand that?

MR. NICHOLAS LANESE: Yes.

MR. BALOG: Yes.

MR. MASTRO: Yes.

MR. SUGLIA: Yes.

THE COURT: Are your pleas of nolo contendere of your own free will?

MR. NICHOLAS LANESE: Yes.

MR. BALOG: Yes.

MR. MASTRO: Yes.

MR. SUGLIA: Yes.

THE COURT: Has anyone induced you or coerced or in any way influenced you to plead nolo contendere or against your will?

MR. NICHOLAS LANESE: Yes.

MR. BALOG: No.

MR. MASTRO: No.

MR. SUGLIA: No, your Honor.

THE COURT: I will go over the plea

negotiations with respect to each one of you. With respect to Nicholas Lanese, two years suspended sentence after maxiumum of three months and the Court can impose a lesser sentence but there would not be a maximum of more than three months to be followed by two years probation, a fine of $7,500 to be paid in one year, within a year.

You would not have to appear as a witness in H-298. The Government also stated that it has no intention of convening the Grand Jury in the immediate future which would necessitate your appearance and that you would reserve your rights to contest this Court's rulings, pre-trial rulings with respect to the motions to suppress and the motion to dismiss, and I believe that was it.

Did I leave out something?

MR. HANKEN: Motion to take deposition.

THE COURT: Did you have a motion to take depositions?

MR. MEEHAN: No, but we agreed with the Government that we would be specific as to what issues we were going to reserve our right to take an appeal on.

THE COURT: What were they?

MR. MEEHAN: With regard to Nicholas Lanese, he's going to reserve his right to appeal the issues that we raised in his behalf in the motion to suppress with regard to the wire tap that was done here, that is the

number one issue. There was Henry Peterson was not appointed Assistant Attorney General at the time of the authorization, that the application for the wire tap interception, which was submitted by the federal agents, was insufficient on its face and there were other means available by which investigation could have been conducted without the necessity of resorting to wire interception.

The third issue under that was that the Government made improper disclosures of the content of the wire tap intercepts once they had been obtained and that they had turned these over to Internal Revenue people for civil proceedings.

We had two motions -- there was another motion to suppress in which Nicholas Lanese asserted his constitutional right under the Fourth Amendment involving a search and seizure on the premises of apartment 46, 3080 Main Street, Bridgeport, and the Frontier Tavern at 3765 Main Street, Bridgeport, together with a search of his own person on the premises at the Frontier Tavern, and our issues there were that the affidavit submitted in support of the search and seizure warrant was insufficient and not of proper cause and we had another motion to dismiss which was addressed to the indictment, and how the indictment had been procured by the wire tap

in raising the issues of the wire tap itself.

The second issue that was raised in the motion to dismiss had to do with Rule 4 --

THE COURT: What are you leaving out?

MR. MEEHAN: Well, your Honor, what I am essentially saying is that we --

THE COURT: What issues are you not going to appeal?

MR. MEEHAN: There were -- there was one other motion to dismiss, your Honor, that we are not -- for example, an issue was raised regarding the state statute itself, as I recall. They are charged here with violation of Section 23 and Section 25 of the 1971 Public Act and we have raised issue that we are not pursuing that, but I wanted to specify, because that was my negotiation with the Government.

The other understanding we had, your Honor, was when you spoke about being called before a Grand Jury that the defendant would not be called before a Grand Jury investigating these two, in relation to these two indictments, both 299 and 298. That was my understanding.

MR. TARRANT: Very well.

MR. MEEHAN: Mr. Ganim was not present when I represented Mr. Balog. I am raising these pre-trial motions and I think Mr. Ganim wants to insert the same.

THE COURT: I am not talking about his client at this point. I'm talking about yours. Anything else?

MR. MEEHAN: No, your Honor.

THE COURT: Is that correct, Mr. Tarrant?

MR. TARRANT: Correctly stated.

THE COURT: Do you have any other understandings?

MR. NICHOLAS LANESE: No, your Honor.

THE COURT: With respect to Mr. Balog, the suggested sentence was two years suspended after a maximum of three months, two years probation, a fine of $5,000 and the same reservation of right to appeal as set forth with respect to Nicholas Lanese.

Is that correct?

MR. TARRANT: That's correct.

THE COURT: Anything else that I have left out? And the right not to be called as a witness in M-298 and also the Government does not intend to convene a Grand Jury in the near future at which your client would be called as a witness.

MR. GANIM: Yes.

THE COURT: Is that it?

MR. GANIM: Yes. What time on payment of the fine?

THE COURT: What did you suggest on that?

MR. GANIM: One year, your Honor.

MR. MEEHAN: On behalf of Nicholas Lanese, we also requested one year.

THE COURT: I think I said that within one year.

With respect to Mr. Mastro, two years suspended sentence, two years probation and $3,000 fine. Were there reservations of right to appeal?

MR. HANKEN: Yes.

THE COURT: The same reservation and right to appeal as set forth by counsel for Richard Lanese and one year to pay?

MR. HANKEN: Yes.

THE COURT: And he will not be called as a witness?

MR. HANKEN: Right. One other thing, your Honor, with regard to the money seized by the Government, I think the approximate amount of $3,500, and as I understand it, Mr. Tarrant will make no claim for the money and unless there is a preexisting tax lien against the money, there will be an order for it to be returned to Mr. Mastro.

THE COURT: Is that correct?

MR. TARRANT: That's correct, your Honor.

THE COURT: Do you have any other understanding,

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Mr. Mastro?

MR. MASTRO: No.

THE COURT: With respect to Mr. Suglia, would you help me out on that. I have one year suspended sentence and one year probation.

MR. AMENDOLA: We would like the reservation of rights and the fact that he will not be called as a witness.

THE COURT: Very well; same reservation as set forth by counsel for Mr.Nicholas Lanese and the same representation with respect to being called as a witness.

MR. MEEHAN: Excuse me, with regard to Nicholas Lanese, there was a sum of approximately $2,000 seized from his person. It's my understanding that the Government would have no objection to that being applied towards the fine or releasing it so it could be applied.

THE COURT: It should be kept separate. I have nothing to do with the release of the funds except to state for the record that if you have an agreement on that, but I think the money should be paid to the Clerk of this Court without saying you have a set-off against me with money held by the Government. If they are going to release, release it to you, and then you pay the fine in Court.

MR. MEEHAN: So there will be no question

about that, I think Mr. Tarrant agreed, or at least Mr. Casey, when we had the other discussions, that the money seized on his person, which was -- there was no evidence of gambling with it, he would be entitled to the return and I think Mr. Tarrant's position is he would have no objection to it being returned so long as there was no assessment taken against that money at the present time; is that correct?

MR. TARRANT: Correctly stated, your Honor.

THE COURT: That may be added to the agreement.

Have I covered everything?

MR. TARRANT: Yes.

THE COURT: You may be punished as a result of your nolo contendere plea and the maximum punishment provided for by statute is $20,000 and/or five years imprisonment.

Do you understand that?

MR. NICHOLAS LANESE: Yes.

MR. BALOG: Yes.

MR. MASTRO: Yes.

MR. SUGLIA: Yes.

THE COURT: I would like to ask each of the attorneys if there is any reason why their clients should not plead nolo contendere. Do you know of any reason why

your client should not plead nolo contendere?

MR. MEEHAN: No.

MR. HANKEN: No.

MR. GANIM: No.

MR. AMENDOLA: No.

THE COURT: I would like to ask Mr. Tarrant as an officer of this Court if he represents that he is of the opinion that if this case went to trial, the Government could prove each and every essential element of the crime charged beyond a reasonable doubt and if so, what is the factual basis for that opinion.

The Court should note for the record that it's very familiar with the underlying facts of the case, having had multiple pre-trial motions before it and having held hearings and also counsel for the respective parties have discussed this case at length with the Court in chambers, but for the record briefly state what the Government's case would be, Mr. Tarrant.

MR. TARRANT: If this case went to trial, the positive proof would consist of conversations surveilled electronically over a telephone of apartment 46, 3080 Main Street, Bridgeport, Connecticut which was done pursuant to an order entered by Judge Blumenfeld in December of 1971.

The intercept was in operation from December

17th of 1971 through December 20th, four days of conversations would reflect the structure of the illegal gambling business which is the subject of this indictment, together with the role of each of the defendants that was present standing before the bar.

The intercepted conversations identified by special agents of the Federal Bureau of Investigation, who are familiar with the voices of the defendants or local police officers who are either familiar with the voices of the defendants or who have been utilizing voice exemplars in making their identification.

The conversations would illustrate that Nicholas Lanese acted as a director of the operation and gave suggestions and orders to some of the subordinates.

William Balog operated the center bookmaking office, which was the location where the wire tap was installed.

The Defendant, Mr. Mastro, was depicted during the conversations as an agent of the operation who would provide bets and wagers from customers to the central office, but more importantly would provide a line or line information to the central office, one of three, that it received during the course of its operation.

Mr. Suglia would be depicted as an agent who was accepting bets and wagers and phoning them into the

office.

The primary gambling activity involved in this business was sports but on occasion such as an example, Mr. Suglia, horse bets would also be involved.

The proof would also encompass the results of such warrants executed on New Year's Day 1972, particularly depicting the sports enterprise or the sports gambling aspect of this illegal gambling business, the New Year's Day football games.

An expert from the FBI Laboratory in Washington would characterize the physical evidence as well as the conversations that were seized and part of its conclusion would show there was a gross revenue of $2,000 a day in wagers accepted by the illegal gambling business.

THE COURT: The Government has now set forth for the record a capsule of its evidence that it states it would introduce at a trial.

Is it my understanding that no one of the defendants wishes to contest the Government's allegations by going to trial tomorrow?

MR. MEEHAN: Not by going to trial, your Honor.

MR. HANKIN: No.

MR. AMENDOLA: That's right.

THE COURT: The Court is satisfied that the defendants may be put to plea and if each plea is nolo contendere, the Court finds that the pleas are voluntary ones, the motions to vacate the pleas of not guilty are granted and the defendants may be put to plea.

THE CLERK: As to the defendant Nicholas Lanese, does your client waive the reading of the indictment?

MR. MEEHAN: Yes.

THE CLERK: U.S. of America versus Nicholas Lanese, criminal H-298, to the one count indictment charging you with violation of Sections 1955 and 2 of Title 18 U.S. Code, what is your plea?

MR. MEEHAN: If your Honor please, I have a written plea of nolo contendere that's been signed by Mr. Lanese. I would like to file it on his behalf.

THE COURT: That may be filed. Mr. Lanese should answer the Clerk.

MR. NICHOLAS LANESE: I plead nolo contendere.

THE CLERK: As to the defendant William Balog, does your client wish to waive the reading?

MR. GANIM: Yes.

THE CLERK: U.S. versus William Balog, criminal H-298, to the one count indictment charging you with violation of Sections 1955 and 2 of Title 18, U.S.

Code, what is your plea?

MR. BALOG: Nolo contendere.

THE CLERK: As to the defendant Louis Mastro, does your client waive the reading of the indictment?

MR. HANKEN: Yes.

THE CLERK: U.S. versus Louis Mastro, criminal H-298, to the one count indictment charging you with violations of Sections 1955 and 2 of Title 18, U.S. Code, what is your plea?

MR. MASTRO: Nolo contendere.

THE CLERK: As to the defendant Charles Suglia, does your client waive the reading of the indictment?

MR. AMENDOLA: Yes.

THE CLERK: U.S. versus Charles Suglia, criminal H-298, to the one count indictment charging you with violation of Sections 1955 and 2 of Title 18, U.S. Code, what is your plea?

MR. AMENDOLA: Nolo contendere.

THE CLERK: Defendants Nicholas Lanese, William Balog, Louis Mastro and Charles Suglia all plead nolo contendere to Count One.

THE COURT: After consideration of the Government's evidence against the defendants through knowledge imparted to the Court by pre-trial motions,

information given to the Court in chambers and Mr.Tarrant's statement on the record this morning and in view of the defendants and their attorneys colloquy with the Court, the Court finds each of the defendants guilty of the charge; therefore, a judgment of guilty against the defendant Nicholas Lanese shall enter on the record, a judgment of guilty against the defendant William Balog shall be entered on the record, a judgment of guilty with respect to the defendant Louis Mastro shall be entered on the record; and judgment of guilty with respect to the defendant Charles Suglia shall enter on the record.

Same bonds may continue pending sentence.

Now, continuing with respect to Richard Lanese and Daniel Levin, the Court makes the same observations that it did with respect to the prior defendants, that the Court is well aware of the underlying facts, because there were pre-trial motions and representations made to the Court in chambers.

There have been plea negotiations and the case is before the Court at the present time. The Court did not suggest any of the sentences that were recommended, however, there was a discussion as to whether or not the Court would accept the suggestions by the Government.

The Court indicated upon representations made that it would accept the recommendations of the Government

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subject, of course, to the presentence report and if the Court felt for any reason it could not go along, it would notify counsel, explain why and the defendants would be given an opportunity to withdraw their plea.

The second aspect of the discussion in chambers concerned a type of plea these defendants would make and it was agreed that the pleas would be entered, pleas of guilty would be entered under the principles established in North Carolina versus Alford, that the defendants dispute the Government's contention of the amounts of income they received from this gambling operation and that no way do they admit these amounts of money in any type of tax case or jeopardy assessment or any other civil proceeding of which may be instituted by the Government.

In other words, they admit they were part of the operation but they deny all aspects of the amounts of money which would make them liable under the tax laws.

They reserve their rights to contest the Government's figures in any civil proceeding including tax proceedings.

Is that correct?

I would like to ask each of the defendants, Mr. Richard Lanese first and then Mr. Levin; have you had a full and adequate opportunity to discuss with your attorney the nature of the charge against you in this

indictment?

MR. RICHARD LANESE: Yes.

MR. LEVIN: Yes.

THE COURT: Do you have any questions you would like to ask me?

MR. RICHARD LANESE: No.

MR. LEVIN: No.

THE COURT: I'm going to review the charge against you in this indictment and then ask you some questions. The Government contends that on or about the 17th day of December, 1971 and continuing thereafter up to and including the 1st day of January, 1972, you were involved in an illegal gambling business, to wit: bookmaking and the gambling business violated the laws of the State of Connecticut and involved more than five persons who conducted, managed, supervised, directed or owned part of the business and the business had a gross revenue of $2,000 in any single day.

It is my understanding that you do not wish to exercise your constitutional rights and have a trial to contest those charges against you; is that correct?

MR. LEVIN: Yes.

THE COURT: Do I understand that your pleas of not guilty may remain on record and that your trial will commence tomorrow and you will be represented by

counsel and the Government will have to prove each and every essential element of the charges against you, you would have a right to confront and cross-examine the Government witnesses, you would have a right not to incriminate yourselves and you would have a right to call your own witnesses if you wished, but if you withdraw your pleas of not guilty and enter pleas of guilty, you are waiving those rights?

MR. RICHARD LANESE: Yes.

MR. LEVIN: Yes,sir.

THE COURT: Is your plea of guilty of your own free will?

MR. RICHARD LANESE: Yes.

MR. LEVIN: Yes.

THE COURT: Has anyone induced you or coerced you or in any way influenced you to plead guilty against your will?

MR. RICHARD LANESE: No.

MR. LEVIN: No.

THE COURT: There have been plea negotiations in this case and with respect to Mr. Richard Lanese, the Government has recommended and the Court has tentatively agreed to accept the following sentence: two years suspended sentence, two years probation, a fine of $3,000 with one year to pay; you would have a right to

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appeal the motions -- this Court's rulings on motions to suppress, motion to dismiss, motion to take depositions and you would not be called as a witness if any of the defendants go to trial under P.B. 298; is that your understanding? Did I leave something out?

MR. GRAHAM: I would like to include the specificity that Nicholas Lanese's attorney, Mr. Meehan, went into.

THE COURT: For what issues can be appealed?

MR. GRAHAM: Yes, sir.

THE COURT: That will be incorporated by reference thereto.

Did I leave anything out other than that? Did that cover everything?

MR. GRAHAM: Yes, your Honor.

THE COURT: Do you agree, Mr. Lanese?

MR. RICHARD LANESE: Yes.

THE COURT: Now, with respect to the Defendant Levin, the plea negotiations involved the following: recommendation of one year suspended sentence, one year probation, a $1,500 fine with nine months to pay, reserving the right to appeal the issues as mentioned with respect to Nicholas Lanese and also Mr. Levin would not be called as a witness.

MR. HANKEN: Yes.

THE COURT: Is that correct?

MR. HANKEN: Yes.

THE COURT: Is that correct, Mr. Levin?

MR. LEVIN: Yes.

THE COURT: Do you have any other understanding that I left out?

MR. LEVIN: No, sir.

THE COURT: Do you understand that the maximum sentence you are exposed to is $20,000 and/or five years?

MR. RICHARD LANESE: Yes.

MR. LEVIN: Yes.

THE COURT: I would like to ask each of the attorneys whether he knows of any reason why his client should not plead guilty.

MR. GRAHAM: No.

MR. HANKEN: No, your Honor.

THE COURT: I would like to ask Mr. Tarrant, if as an officer of this Court he represents that he is of the opinion that if this case went to trial, the Government could prove each and every essential element of the crime charged against each of these defendants. You have stated several times for the record what the overall case against the defendants in H-298 consisted of and moreover I am fully familiar with the Government's

case due to the pre-trial motions and conferences in chambers.

Why don't you just incorporate those remarks by reference thereto and address yourselves to the role played by Mr. Richard Lanese and Daniel Levin.

MR. TARRANT: I so represent to the Court, and starting off from where I left off during my last statement to the Court to the proof positive, the wire intercept as intercepted by special agents of the FBI for local police officers would show that Mr. Richard Lanese was an agent of the operation, which means that he would accept bets and wagers from customers and pass them onto the central office operated by William Baloq.

Daniel Levin's principal contribution to this particular illegal gambling business was being a line source.

As I mentioned before, this entire business had three sources of line for sports information and Mr. Levin was one of the principal sources for that line information.

His role as an agent as one who accepted bets and wagers on behalf of this operation was very minimal.

THE COURT: The Court is satisfied that the record contains strong evidence of actual guilt in this

case.

As I stated, I am fully familiar with the facts and roles played by each of the defendants as represented by the Government in various proceedings before this Court and the Court is convinced there is a strong actual basis for each of the defendants plea of guilty; therefore, the defendants' motion to vacate their pleas of not guilty are granted.

Each of the defendants may be put to plea and if he pleads guilty, the Court finds that the plea is a voluntary one.

THE CLERK: As to the defendant Richard Lanese, does your client waive the reading of the indictment?

MR. GRAHAM: Yes.

THE CLERK: U.S. of America versus Richard Lanese, criminal H-298, to the one count indictment charging you with violation of Sections 1955 and 2 of Title 18, U.S. Code, what is your plea?

MR. RICHARD LANESE: Guilty.

THE CLERK: As to the defendant Daniel Levin, also known as Herman, does your client wish to waive the reading of the indictment?

MR. HANKEN: Yes.

THE CLERK: U.S. of America versus Daniel

Levin, also known as Herman, criminal H-298, to the one count indictment charging you with violations of Sections 1955 and 2 of Title 18 U.S. Code, what is your plea?

MR. LEVIN: Guilty.

THE CLERK: Defendants Richard Lanese and Daniel Levin plead guilty to the one count.

THE COURT: Very well. The same bond.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	
Plaintiff	:	
VS.	:	Criminal No. H-298 H-299
MICHAEL PIAZA, NICHOLAS LANESE, RICHARD LANESE, NICHOLAS MESSINA and WILLIAM BALOG	:	
Defendants	:	

New Haven, Connecticut
October 12, 1976

B E F O R E :

HON. ROBERT C. ZAMPANO, USDJ

A P P E A R A N C E S :

PETER CASEY, ESQUIRE
Assistant United States Attorney
Hartford, Connecticut

FOR THE DEFENDANT:

RAYMOND GANIM, ESQUIRE
2192 Main Street
Stratford, Connecticut

THE COURT: Now, we have Mr. Balog. What would you like to say on behalf of Mr. Balog?

MR. GANIM: After the presentation made by Attorney Meehan on behalf of his client with the ultimate result it would seen hardly unnecessary for me to say too much other than to point out the history of the gentleman, is an exemplary history.

There are no marks against his record. He is a family man, lives with his parents. He has supported the parents. He has helped.

Back a few years ago, he had some illness which prevented him from carrying on usual employment and thereafter got involved, I suppose, in the predicament.

I note with interest -- I have said this for many years and I know that the judges that I have appeared before on matters similar to this are loath to accept the argument that I present, and it was approached to some degree here this morning, and that is on the morality aspect of it.

I know the Court's answer is, "Well, that's what the law is," but I think that somewhere along the line the priorities are all mixed up on the police enforcement.

I think that the time and effort and the money

and the manpower that's spent trying to ferret out gambling is simply a waste of time in the sense that when you sit back and consider that the State goes into the business of gambling, they build an emporium down in Bridgeport for jai alai and half the Town is going there, 8,000 on the weekends, Tuesday night if you attend there it's booked up solid for the weekend, no reservations at all.

Something like $3 million is wagered and in the process of putting up that plant, I suppose there has been more money directed in unusual and unauthorized channels and that perhaps could be accounted for in all of the aspects of this particular gambling situation that is before you now.

I stopped on Boston Avenue the other day, and this Saturday I thought it proper for myself to make a wager and I went down there and in front of the establishment they had seven or eight people selling sheets and touting.

It seems to me that the whole situation as far as priorities is concerned, is way out of whack.

THE COURT: Aside from the morality and aside from the fact that the Legislature can pass legalized gambling laws, how about all the tax consequences that result from illegal gambling operations?

You go down the track and you win $10,000, you're going to pay a tax on that.

MR. GANIM: You are not going to pay 10,000 on it. You are not going to pay a tax on it because the situation is at 300 to 1, after that you pay a tax on it. Then they will withhold.

THE COURT: You can see that I never won $10,000 at the track.

MR. GANIM: I can see that you have never been to the track, which I think is quite nice, but you're missing something that's very exciting.

No, you can go to the window and bet and you can bet and walk away with $10,000 and nobody will say anything to you.

The only time they will turn around and take your driver's license or take your Social Security is if the daily double exceeds a $2 bet, $600. That's the only time.

THE COURT: You better not comment any further.

MR. GANIM: I don't think that this man should be incarcerated. I think that this man should pay a fine and the only reason why is that there is the overhanging incarceration aspect of it is because during the negotiations I think that the law enforcement

agencies of the Government insisted there be some time because the time and the effort that was put in in order to turn around and bring this case to the Court.

If it weren't for their insistence based upon the effort they put in, a fine certainly would have been satisfactory and if it's a big enough fine, I think in all respects it would have carried the same implication by way of deterrent as a jail sentence would.

I'm going back to that aspect of it when the police or law enforcement agencies have put so much time and effort into something that it's not deserving that kind of money spent by the taxpayers, it's not deserving that kind of effort spent by the police and the law enforcement agencies, when there are other situations that call for their attention.

My argument, of course, is priorities and I realize that it's like hollering against a wall because it's not going to really make a very favorably impression. There's something to be said that after the law does say a certain thing and there is a violation of the law, but there is something wrong with the law when it demands that in situations like this, where there is no physical violence, there's no robbery, no one is hurt, the people that are doing the wagering wit these people

are people who want to do that wagering and then as a result of it the law looks upon it in such a -- with such serious implications that they say what has to happen here is the man has to go to jail. I don't think it's right.

I think that under the circumstances, in a situation that befits the role that was played by my client in this instance, that a fine and suspended sentence and some probationary period, which would insure that he comply with the law in the future and that if he does not, then at that time he sustains the wrath of the Court by a way of a serious sentence, and that would suffice.

THE COURT: Mr. Balog, do you have anything to say in your own behalf?

MR. BALOG: No.

THE COURT: Of course, policy decisions are made by the Congress and the legislative decisions are made by the Congress.

We enforce the law as written and, as I stated with the Lanese and Spinelli cases, Mr. Balog would have been right up there with them. Maybe not quite as Nicholas Lanese but pretty close and his certainly would have been higher and nothing more for a deterrence.

Everything I said to the other persons involved, Mr. Balog, applies to you. What you do while you're on probation and thereafter is up to you.

I just think, putting cards on the table, that you, too, would be probably harder to catch if you foolishly decided to go back into that business but you can be assured that you will be one of the ones that the Government would be looking for to expend their resources on, so it's up to you to weigh those things.

Under all these circumstances, it is adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representatives for imprisonment a term of two years, sentence suspended after service of three months.

The defendant is placed on probation for two years. The defendant shall pay a $5,000 fine within one year. If there is an appeal, the Court will stay execution of the sentence pending the appellate procedures. If there is no appeal, the Defendant, of course, shall submit himself immediately, but if he would like ten days, I will stay for ten days.

MR. GANIM: Thank you, your Honor. Bond is the same?

THE COURT: Yes, same bond.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	
Plaintiff	:	
VS.	:	Criminal No. H-298 H-299
MICHAEL PIAZA, NICHOLAS LANESE, RICHARD LANESE, NICHOLAS MESSINA and WILLIAM BALOG	:	
Defendants	:	

New Haven, Connecticut
October 12, 1976

B E F O R E :

HON. ROBERT C. ZAMPANO, USDJ

A P P E A R A N C E S :

FOR THE GOVERNMENT:

PETER CASEY, ESQUIRE
Assistant United States Attorney
Hartford, Connecticut

FOR THE DEFENDANT:

CHARLES GRAHAM, ESQUIRE

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THE COURT: Mr. Richard Lanese.

One other thing. If there is an appeal, probation shall commence at the conclusion of all the appellate procedures. Of course, if there's no appeal, then probation starts immediately.

Mr. Lanese, I intend to sentence you to two years, suspended sentence; two years probation; $3,000 fine, payable within one year.

MR. GRAHAM: We would like to add, your Honor, we certainly concur in that.

I would like to address myself to the fact that the fine is large for a man of his means and that his involvement was very minor. It extended over a short period of time and as we have heard the Court admonish people to get out of the business, Mr. Lanese indeed has.

He has been working steadily since the time of the offense and could be considered to be on probation since the time of the offense, since he has never been in trouble either before or after.

In fact, Mr. Lanese's financial condition, being unemployed, prompted him to become involved in this on a part time basis in 1971.

THE COURT: I think Mr. Lanese is doing very, very well with this negotiated sentence that he received,

including the $3,000. I suggest he doesn't push me too far as to what his involvement in this business has been because I am not sure it's quite as minimal as you state.

Would you like to say anything else, Mr.Lanese?

MR. LANESE: No, your Honor.

THE COURT: Very well. It is adjudged that under all the circumstances the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisionment for a term of two years. Sentence of imprisonment is suspended forthwith. The defendant is placed on probation for a period of two years.

The defendant shall pay a fine of $3,000 within one year as a condition of probation.

MR. GRAHAM: Thank you.

* * *

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

----------x

UNITED STATES OF AMERICA :

Plainti . :

VS. : Criminal No. H-298
H-299

MICHAEL PIAZA, NICHOLAS LANESE, :
RICHARD LANESE, NICHOLAS MESSINA
and WILLIAM BALOG :

Defendants :

----------x

New Haven, Connecticut
October 12, 1976

B E F O R E :

HON. ROBERT C. ZAMPANO, USDJ

A P P E A R A N C E S :

PETER CASEY, ESQUIRE
Assistant United States Attorney
Hartford, Connecticut

FOR THE DEFENDANT:

RICHARD MEEHAN, ESQUIRE
144 Gold Hill Street
Bridgeport, Connecticut

THE COURT: Mr. Nicholas Lanese.

MR. MEEHAN: As you can see from the pre-sentence report, Mr. Lanese is a first offender. He has an excellent background, born and raised in Bridgeport, comes from a good family. He is the oldest of three children.

He left school, if your Honor please, at the age of 16 and he went to work as an apprentice bricklayer. Now, he did progress from a full-fledged journeyman mason and he was employed as a bricklayer, your Honor, for a good 20-year period.

He remained a bricklayer until he had a very serious accident in which he was hospitalized for two years -- weeks -- at Bridgeport Hospital and it resulted in a bad back condition, so at that point, your Honor, in 1969 he had to seek other means of a livelihood for himself and his family and he opened a store on North Avenue in Bridgeport.

In 1970, together with his wife and father, he as a family ran the Frontier Restaurant until 1974.

From 1975, your Honor, to shortly again he assisted his wife in the operation of a restaurant in Westport, and during that period of time, your Honor, during the 20-year period where he was employed as a

bricklayer, I would like your Honor to consider the fact that he served in the United States Army from 1953 until 1955 on active duty and then upon the conclusion of his active duty, he then served for six years, your Honor, on a stand-by reserve and in 1961 received an honorable discharge from his Government for service he rendered to his Government, and I think it's of importance for the Court to note that during all this period of time, your Honor, when he was a youngster going to school he was never a disciplinary problem, when he was a young man growing up, never a disciplinary problem, never a problem with the authorities.

When he was in the service, he was never a disciplinary problem. As a matter of fact, he earned the Good Conduct Medal and the National Defense Accommodation.

Now, your Honor, I think the Court has to consider, and we concede, your Honor, that he was involved in this situation, this operation back in 1971 but I think your Honor has to consider that here is a man that he certainly came from a family where he had the proper morals and religious teachings.

It certainly is displayed in the life that he led, your Honor, up until the time of his arrest. I think it's further displayed in the fact that five years

have elapsed, your Honor, and he has not been involved with the law, has not acquired any criminal record and this is the record that he has here.

Now, as you can see, your Honor, he is a devoted father and a devoted husband.

In fact, his wife Elva is seated in the courtroom today. Mr. Lanese has been active in his church, he is a religious man and although he doesn't attend with regularity at the present time, I would like your Honor to know that his wife does attend. she goes to Mass every day of the week, your Honor.

There is another factor that I would like your Honor to consider, and that's the condition of his health. It's been verified in the presentence report that Mr. Lanese has a circulatory problem and he does have sugar diabetes.

He is presently under the care of Dr. Lisi in Bridgeport for the diabetic problem.

Now, your Honor, I know that the statute to which he pleaded nolo is a felony with the U.S. Government but I would ask your Honor to consider what has happened in Connecticut since 1971.

If your Honor looks at Public Act 865 Section 23, which is part of the indictment, ironically Public Act 865 was the beginning of legalized gambling in

Connecticut.

It is the Act that set up the Commission on Special Revenue, and if you look at Section 23 you will see that's a misdemeanor. The maximum penalty under Section 23 is one year.

As a matter of fact, he is also charged with violating Section 24 of 865, and the maximum penalty there, your Honor, is not even a jail sentence that prevails up to today.

There have been some amendments of that Act but it's still a misdemeanor in Connecticut. I know the Federal Government considers five or more being a felony but I would ask your Honor to consider the conduct that he is supposed to have committeed within the State of Connecticut.

The State of Connecticut considers it a misdemeanor and I would ask you, if your Honor please, to impose a suspended sentence all the way around, that is, a proper sentence here.

I think the man is a good candidate for probation. I think a suspended sentence with two years probation or three years probation, whichever the Court would impose, would be a sufficient deterrent that he would not engage in this conduct again, particularly if your Honor were to impose a two-year suspended sentence with a

period of two or three years of probation. What else is incarceration for, your Honor?

Really, it's for rehabilitation and deterrence, is it not? Has this man done something that great that he should be incarcerated where people that have been paraded before this Court selling heroin on the street, doing other real violent acts for which the Court, when it sees fit and feels there is rehabilitative features there, imposes suspended sentences even in very serious felonies.

Now, the Government wants the Court to send this man to jail for three months and it will disrupt the homelife that he has and what purpose will it really serve, your Honor? What deterrent is it going to be to this man and to those? Certainly it's a two-year sentence hanging over his head with probation, which is going to be a sufficient deterrent.

THE COURT: Would you like to say anything in your own behalf, Mr. Lanese?

MR. LANESE: No.

THE COURT: There is no question that if the Government's case went to trial and if the Government proved what it contends it could have and with what the defendant pled guilty to and others have pleaded nolo, Mr. Lanese would probably be at the very top of the

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hierarchy of this business and if we project ourselves to the time of sentencing, he and maybe one or two others would be incarcerated for quite a while.

Whether or not there is a deterrent to put Mr. Lanese away, I think there is, and I think his greatest problem, however, is when he gets back out.

On the one hand, if he makes a foolish mistake of getting back into the business, he would be the toughest one to catch but, on the other hand, he would be the one the Government would be looking for with the most energy and the most of its resources, so I just hope he doesn't go back into the business.

I know what the temptation is. You heard what I said to the other defendants, but there is one thing in violating the laws as your attorney said, although I think that's bad enough, but another thing is getting tangled up with these Federal laws and it's up to you. You are 43 and you've been around a long time and you know exactly what the situation is and I just hope you're not back again because the word will be out, if it's not already, by the way.

MR. MEEHAN: May I say something else.

Really, in all practicality, we have a different climate in the State of Connecticut than we had at the time of this arrest and whether it's right or

wrong -- our Governor, as I believe, as I understand, doesn't believe with the liberality of the gambling, but other people of responsible office do and we now see in the State of Connecticut a different climate. We no longer have old Colonial concepts that gambling was against public policy. That's been done away with by our Legislature with the enactment of Public Act 865.

What I say, your Honor, is that originally gambling was prohibited in Connecticut because it was supposedly against public policy. We now have right in the center of Bridgeport Off Track Betting. Obviously, the Legislature doesn't think it's against public policy.

THE COURT: Mr. Meehan, if I ruled and judged based on what I thought the law should be, we would have, you know, law made by men and not by the Legislature and what I am saying --

MR. MEEHAN: The evil is not involved here that might -- once had been thought of and that might have been the reason for the original enactment of the Federal Act and I am simply asking your Honor to look at this man. He isn't normally -- if he had come in on some other type of situation, wouldn't your Honor look upon him from that presentence report as an excellent candidate for probation and say, "Look, we are going to give you some credit for serving your country well --"

THE COURT: I don't mean to cut you off. He is getting an awful lot of credit. If you go back into the Stamford situation a few years back, so to speak, Mr. Lanese's alter ego got two years.

If you go back into the New Haven Raids of 1964, Mr. Lanese's alter egos got I think a year and a half, so Mr. Lanese is doing pretty well.

I think you did a good job for him. I think you did very well under all the circumstances. I am more concerned with what happens when he comes out but that's up to him. I just hope he doesn't appear before me again.

Under all the circumstances, it is adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for a period of imprisonment for two years.

The sentence is suspended after service of three months. The defendant thereafter be placed on probation for a period of two years.

In addition, he is fined the sum of $7,500 which must be paid within one year. If there is an appeal, this sentence may be stayed until the conclusion of the appellate procedures.

If there is no appeal, of course, he must surrender himself at the end of ten days.

MR. MEEHAN: If your Honor please, at this

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point, I don't know whether in fact there will be an appeal, but I would like to put on the record the notice of intention to appeal. Whether that will be followed through, I can't tell you at this point.

THE COURT: I will stay it for ten days. Within those ten days, you can make up your mind.

MR. MEEHAN: Your Honor, if you will recall at the time that the plea was entered, it was indicated by the Government that the Government had seized $2,000 in cash that was in his pocket that was unrelated, I believe, to any gambling evidence and as I understand it, the Court might consider that $2,000 towards the $7,500 fine.

THE COURT: Mr. Casey, what is the story on that?

MR. CASEY: Your Honor, Mr. Tarrant is not here. I am not quite sure. If there was an agreement between Mr. Tarrant and Mr. Meehan as to the resolution of those funds, there is no problem.

THE COURT: I don't want to mix up apples and bananas here. If you have $2,000 coming back from the Government, fine, you can collect your $2,000, but I think the $7,500 fine shall be paid by Mr. Lanese.

I do have a vague recollection and that's all it is, Mr. Meehan, that Mr. Tarrant agreed to return that money to you.

MR. MEEHAN: Your Honor will recall that it was in his pants pocket and there was no evidence found--

THE COURT: Mr. Lanese's?

MR. MEEHAN: Right. There was no evidence found in the Frontier Restaurant at the time.

THE COURT: The order shall remain, $7,500 payable within one year and if you can get the $2,000 from Mr. Tarrant, and I have a recollection that he said he would return it to you, you can give that to Mr. Lanese, but we ought to keep things separate.

MR. MEEHAN: May I ask the Court one more thing. Would the Court consider, as it did in the case of Spinelli, that if sentence went into execution that the Court might consider modification --

THE COURT: I will always consider modification of a sentence but just off the top of my head I think that Mr. Lanese is in a somewhat different position than Mr. Spinelli, but I certainly would consider it. It's up to you.

MR. MEEHAN: May he remain at liberty with the same bond?

THE COURT: Liberty, same bond. He either surrenders himself for service within ten days or files an appeal and the imposition of sentence is, of course, stayed until the Court of Appeal rules.

* * 147 *

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

FILED
OCT 20 3 23 PM '76
CLERK
U.S. DISTRICT COURT
BRIDGEPORT, CONN.

UNITED STATES OF AMERICA,

Plaintiff,

v.

MICHAEL PLAZA, NICHOLAS LANESE, RICHARD LANESE, NICHOLAS MESSINA and WILLIAM BALOG,

Defendants.

NOTICE OF APPEAL

Criminal No.H-298
Criminal No.H-299

S I R S :

PLEASE TAKE NOTICE that the defendants NICHOLAS LANESE, RICHARD LANESE and WILLIAM BALOG, all of whom pleaded nolo contendere to violations of (Sec.1955) U.S.C. Title 18; (Sec.2) U.S.C.Title 18; and were sentenced on October 14,1976, hereby appeal from their judgments of convictions, the sentences and the orders denying their motions to suppress evidence seized pursuant to a search warrant, to eavesdropping warrants, and all other orders denying their preliminary motions.

Dated: Queens, New York
October 20,1976

Yours, etc.

ALEXANDER POTRUCH
Attorney for Defendants-Appellants NICHOLAS LANESE, RICHARD LANESE and WILLIAM BALOG

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Assistant U.S.Attorney
U.S.Department of Justice
Federal Building
Bridgeport, Connecticut

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

---x

THE UNITED STATES OF AMERICA :

VS. : Criminal Action

ROGER L. SPINELLI, ET ALS : No. H-[illegible]

---x

Before the Hon. [illegible]
United States District Judge
New Haven, Connecticut
July 23, 1973

For The Government:

JOHN R. TARRANT, ESQ.,
ASSISTANT UNITED STATES ATTORNEY
1703 John W. McCormack
Post Office Building
Boston, Massachusetts

For The Defendant:

HAROLD ROSNICK, ESQ.,
855 Main Street
Bridgeport, Connecticut

This is to certify that the within [illegible] pages is a true and accurate transcript

[illegible]
Official Reporter

MR. TARRANT: We have before the Court, United States vs. Roger Spinelli, H-299. There are two motions to be filed with the court. One is a motion for additional discovery and inspection; and the second, a motion for leave to take the deposition of one Henry Peterson, who is acting assistant attorney general, in the Department of Justice.

The Government has filed answers to both. As to the motion for additional discovery we have placed in writing certain statements and provided certain additional discovery, and as to the motion for leave to take depositions we have taken a position in writing in opposition to the motion providing additional discovery under that motion.

THE COURT: What happened to all the motions ahead of this particular case?

(Discussion off the record.)

THE COURT: Let us take one thing at a time. The motion for dis covery and inspection --

What does 14m mean?

MR. ROSNICK: This is actually a supplemental motion for discovery and inspection.

THE COURT: Is there agreement on any of them?

MR. ROSNICK: There is agreement on the paragraphs, if your Honor please, with the exception of 14g --

THE COURT: The number of first assistants in that division on October 18, 1971, and if more than one, the

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names and business addresses of all other first assistants; b, the order of ranking first assistants, if any, on October 13, 1971, the dates they were appointed, and a copy of the appointment.

Fill me in as to why you want that.

MR. ROSNICK: If your Honor please, under Section 2516 of the U.S. Code with respect to making application for authorization to obtain wire tap information, it is required that it be the attorney general or assistant attorney general who would, or an assistant attorney general specially designated by the attorney general to make-- to authorize, in this instance Mr. Tarrant, to make application before the U.S. District Court for an authorization for a wire tap.

In this situation Henry Peterson was allegedly designated acting assistant attorney general at the time within the criminal division of the Department of Justice.

There have been certain designations with respect to who is a proper official to make such -- who may authorize such application. It is our position that an acting assistant attorney general is not a proper official.

First there is allegations or within discovery, representation has been made that Henry Peterson was appointed pursuant to Section 0.132 d of title 28 of the

code of Federal regulations which provides that in the instance where there is a vacancy of an assistant attorney generalship, that the ranking deputy would then automatically step into the position of acting assistant attorney general.

Fourteen p4 is trying to find out -- trying to discover the method in which deputies are ranked, and number 2, the actual ranking of deputies because if in fact Henry Peterson was not ranking deputy, then he was improperly appointed acting assistant attorney general. That's the background information.

THE COURT: What would you like to say in opposition, Mr. Tarrant? You do make a partial answer, do you not?

MR. TARRANT: What I have tried to set out, is that Will Wilson was the assistant attorney general in charge of the criminal division from the time of the inauguration of President Nixon up to October 15, of 1971, when he submitted his resignation.

At the time that his resignation was submitted to the White House Henry Peterson was Mr. Wilson's assistant. It was known to us, being part of the departmental staff, that he was the first assistant. However, starting sometime in 1970 or 1971, the department stopped or ceased to assign's deputies to the assistant attorney general's first and single

cases has come out in what we call the Peterson situation: that is, where John Mitchell acted in his own capacity as Attorney General, and Henry Peterson signed the letter as his own record in this case as the acting assistant attorney general, designating the attorney in the field, myself in this case, to proceed to the District Court for an authorization to intercept.

THE COURT: What do those lines of cases state?

MR. TARRANT: Well, there is a split of authority. There are two cases that I know of where the courts have held that the letter from Henry Peterson, as an acting assistant attorney general, would not suffice as authority for the attorney to go to the court for an interception order, because in the meaning of the statute, the acting assistant attorney general in an acting capacity is not the politically responsible person that Congress had in mind at the time that they enacted the statute. Not politically responsible because he has not been confirmed by the Senate. I believe that's the rationale in the two cases which hold against us.

There are five or six cases which have held that this procedure followed by the Department of Justice is a proper procedure, but basically, those cases do not stop at the function of Henry Peterson as acting assistant attorney general, but rather look at the entire scheme of things as the Department of Justice handles them, and that is that the attorney general, prior to Mr. Peterson signing the letter, the attorney general

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made a formal approval of the request, and that it's the attorney general's approval, which is important.

THE COURT: I am not faced with that issue right now.

MR. TARRANT: No. What our problem is: this is developing the facts upon which we can apply the law.

THE COURT: Why hasn't he told you all you have to know?

MR. ROSNICK: Before the Court now, he has given me information which would have satisfied my motion for discovery if it had been set forth in his discovery and inspection. In other words, I am interested in finding out the method in which deputies are ranked. Is it tenure, is it appointment, or whatever?

MR. TARRANT: Well, now, I don't want to be misleading and say -- is the way the department does business, because, quite frankly, I don't know if anybody knows how the department does business day in and day out. I am saying that I have been with the department during the tenure of Henry Peterson as acting first assistant to the assistant attorney general, and now as assistant attorney general, and this is what I observed happening in the office of the assistant attorney general. I can speak from actual knowledge, but I am not --

THE COURT: He wants to know the names and addresses of all first assistants. We know Peterson was one. And Shapiro, until the titles were done away with, was known as

second assistant, from your personal knowledge in the department?

MR. TARRANT: Yes.

THE COURT: Are there any other first assistants that you knew of?

MR. TARRANT: No, sir. The office of the assistant attorney general is comprised of the assistant attorney general for the criminal division, the deputy or first assistant and the deputy or second assistant. Only three people.

THE COURT: I think your answer is on the record combined with apparently other cases, at least seven, in which they discuss Mr. Peterson and his role, which should clearly inform defense counsel exactly what the situation is in this case and, therefore, with that combination of information, I would think 14P4 has been answered.

What do we have to -- what do we have left for Mr. Peterson's -- has that been objected to?

MR. ROSNICK: If your Honor please, with respect to 14P4, I don't believe -- and maybe I have not been listening too closely -- whether Mr. Tarrant has indicated the method in which he or the reasoning he uses to designate Henry Peterson first assistant and Harold Shapiro second assistant.

THE COURT: He said he has personal knowledge, and that when he was in the department, until they did away with the titles, Mr. Peterson was recognized as the first assistant.

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He was there first. That could be one reason. He had tenure, maybe. But in any event, he answered your question, I would think.

MR. ROSNICK: What I am looking for, frankly, your Honor, I submit that because they have -- they did away with the titles first assistant and second assistant, I would submit that there are no ranking deputies and that is a critical factual issue within our case.

THE COURT: How do you answer that?

MR. TARRANT: If there are no ranking deputies, I think the argument or the point that counsel is pursuing falls. What he is looking for is a ranking deputy who didn't get the job and, therefore, the Department of Justice made a mistake in giving Peterson the job over someone else. That's a very -- I think it's a simple, yet complicated question to answer.

The person held the job that Henry Peterson held at the time he signed this letter to me was Nicholas Katzenbach, who was the first assistant to the assistant attorney general, resigned, and Mr. Peterson took his job as first assistant to the assistant attorney general within the criminal division.

THE COURT: Within the time frame we are talking about?

MR. TARRANT: I would have preceded the incident here, yes.

THE COURT: So that Mr. Peterson was the first assistant?

MR. TARRANT: In that office, yes, of the assistant attorney general.

MR. ROSNICK: If your Honor please, he has made one statement in which I believe he said that tenure alone doesn't determine rank, and that's basically what he is going on in his designation of Henry Peterson as first assistant.

THE COURT: We can go around the Horn on this all day long. Mr. Tarrant says, "I have personal knowledge, I was in the department, Mr. Peterson was the first assistant." That's his answer. If you can challenge that some other way, if that were set forth in the writ, there would be no cause to challenge that that is an answer, anyway. Whether you agree with the answer or not, that's something else, but Mr. Tarrant says, "Look, when I was there, Mr. Peterson was the first assistant, and Mr. Shapiro was the second assistant," so your question is answered.

MR. ROSNICK: But he has also represented to the Court that those titles have been eliminated.

THE COURT: But at the time we are talking about, I specifically asked him if it was in that time frame, and just preceding it --

MR. TARRANT: What counsel is after why is it that when Mr. Wilson stepped down that Mr. Peterson stepped up as opposed to anybody else in the department, and I think the answer is he was next in line.

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THE COURT: What if he wasn't next in line? He took the job. He was given the job.

MR. ROSNICK: He wasn't give the job. He took it by a matter of federal regulation. He was not appointed by anyone. If he was not the ranking deputy within the criminal division of the Department of Justice, it would have required Mr. Mitchell to have appointed him acting assistant attorney general. That's the point we are making --

THE COURT: On all these cases that we have heard about, the seven, don't the judges take up exactly what Mr. Peterson's position was at the Department of Justice?

MR. ROSNICK: Not to my knowledge.

MR. TARRANT: I don't knowof any case, realistically, that has pierced our personnel make-up: that is, to decide who got what job and how.

THE COURT: That's not the question in my mind --

MR. TARRANT: He acted in that capacity.

THE COURT: -- unless I am not understanding something here. There is a question asked by way of motion for discovery and inspection. It's been answered. Now you're challenging that answer, but I think that's going to take some other method. Mr. Tarrant says Mr. Peterson was the first assistant. That's his answer.

Now you're saying, "Wait a minute. I challenge that," but that's, by way of motion for discovery and inspection,

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that's his answer. So that's -- let's get to the -- I so find, and if there are other available procedures for you to challenge that, that's up to counsel, but that's the government's answer. It's a question of fact if that answer is correct, but it would be the same for any other answer.

For example, you asked, apparently, for the copy of the letter and so forth in 14M, and the government answers, "This is a copy of theletter." You may say it's not a copy of the letter, well, for some other procedure, or some other hearing, but that's the government's answer.

Let's go to the motion for leave to take deposition. Is that objected to?

MR. TARRANT: Yes, it is, your Honor.

THE COURT: Is that still open for my ruling?

MR. TARRANT: Yes, sir.

THE COURT: I will hear counsel.

MR. ROSNICK: If your Honor please, this is a method of challenging the answer as to ranking deputies. We would like permission to take the deposition of Mr. Peterson in Washington, D.C., or at a place designated by him, which would be of convenience for him. We are not attempting to place a burden upon the government in asking for a leave to take the deposition of Mr. Peterson, but we feel because of Mr. Peterson's appointment and authorizations are in issue with respect to the motion to suppress and motion to dismiss herein, that it would

be necessary prior to that time to obtain, or at least obtain personal information from Mr. Peterson.

Now, there has been a case in the Eastern District of Virginia, the U. S. District Court, which has established that on certain applications which were purportedly signed by Mr. Peterson, and which the government introduced into evidence as being signed by Mr. Peterson, upon expert testimony was discovered that certain of the signatures were, in fact, not Mr. Peterson's, and eventually affidavits by Mr. Peterson represented: "Yes, it is true that certain of those documents were not signed by me."

I would submit that we would like the opportunity of taking to Mr. Peterson certain of the applications which purportedly contain his signature and we would like an opportunity to obtain an exemplar from him and an opportunity to discovery again the procedure whereby one becomes ranking deputy within the criminal division of the Department of Justice.

THE COURT: I notice there is lack of briefs, unless I mislaid them.

MR. ROSNICK: There is no brief.

THE COURT: The Clerk shouldn't accept these motions without briefs.

What do you have to say, Mr. Tarrant?

MR. TARRANT: In response to the latter comment by the Court, I don't see them before you, but as to each motion

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that has been --

THE COURT: There has been a response, but I don't see any law cited.

MR. TARRANT: Actually, I don't know that we are going to find any law that's going to treat this situation.

If I may reflect on some history in this particular case, we met back in October of law year. One of the requests that was made by counsel on the defense side orally, and which theCourt granted and directed me to seek from the Department of Justice, an affidavit from Henry Peterson, establishing whether or not the signature affixed to the letter dated December 15 of 1971 to me was, in fact, his signature; and also to secure from the Attorney General, John Mitchell, or the then Attorney General, an affidavit establishing whether or not he approved, gave his personal approval to this request for authorization.

Both affidavits were secured from the department, both affidavits were incorporated into a supplementary response which I made in this case, and copies of those affidavits were provided to counsel, the original of those affidavits placed on file with the Clerk of the Court.

I submit that what we are asking -- what we are seeking here is a factual foundation upon which to apply certain law that has developed in this area, that the affidavits do answer the questions that have been posed by defense.

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THE COURT: They certainly answer the question about signing the letter. He says, "Yes, that's my signature."

Then there were two other aspects, I believe, mentioned by counsel. One, they want an exemplar of his signature; and two, how -- what procedure was followed for designating assistant attorney generals, or first assistants or ranking assistants, which I don't believe are answered in that affidavit.

Did I overlook something else that you wanted?

MR. ROSNICK: That's basically it.

THE COURT: I am not going to rule yet. What if I ordered you to obtain an exemplar of Mr. Peterson's signature within a reasonabletime, and sent it to counsel -- we have one, don't we, at the end of the affidavit?

MR. TARRANT: Yes, your Honor, the original affidavit that's on file with the Clerk of the Court contains an exemplar.

THE COURT: Are you familiar with -- do we challenge that's Mr. Peterson's signature? It's under oath, it's signed.

MR. ROSNICK: In light of the factual information which was discovered in the Eastern District of Virginia, I cannot stipulate to the fact that is Mr. Peterson's signature.

THE COURT: It's under a notary's signature.

Let me throw this out: what if I ordered -- do you know Mr. Peterson?

MR. TARRANT: Yes.

THE COURT: Do you see him often?

MR. TARRANT: No, I don't. I have not been to Washington for over a year and a half.

THE COURT: What if I ordered you to obtain a copy of his signature, duly certified by a responsible officer? How big a problem is that?

MR. TARRANT: Before I answer the question, could I ask -- what type of certification he would care to have.

THE COURT: We do have one by a notary public, and apparently counsel is not satisfied with that. Is Mr. Peterson still with the department?

MR. TARRANT: Yes. He is on vacation now, but he is still with the department. He is now the assistant attorney general for the criminal division. He was confirmed by the Senate February of '72.

THE COURT: I have no reason to doubt that an official notary signature is one that the Court should accept without question, and then it's up to counsel to prove to me that that commission is invalid, or theperson has been a party to a fraud on the Court.

As I look down, in all respects it seems proper, however, this is the Court's copy and -- I am going to rule this way. Mr. Tarrant, you are an officer of this Court, you are a respected member of the Bar of this Court, one known to the Court. I am goingto order you to obtain a signature card,

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an exemplar of Mr. Peterson's signature, duly certified, and by an officer authorized to take oaths, and if counsel can challenge that, okay, I will listen to that some other time.

How about getting us a statement in reply to the second question: how are assistants appointed, assigned by Mr. Peterson? What I am trying to do is avoid the deposition by getting the answers as if they were written interrogatories, the first one being: Kindly sign your name below; two, please describe the procedures by which first or ranking assistants were appointed during the time frame relevant to this action; and then Mr. Peterson would say: The procedures were as follows.

MR. TARRANT: I will secure those.

THE COURT: Then, I think we have everything we need -- I suppose you are working up to a motion to dismiss?

MR. ROSNICK: Motion to dismiss and motion to suppress.

There is one related matter which wasn't directly -- hasn't directly been pointed out in the motion today. I would like to also obtain, if possible, the -- an exemplar of Mr. Mitchell's initials, and the same procedure would be satisfactory to counsel.

MR. TARRANT: That presents a somewhat more difficult problem.

THE COURT: He swears under oath that those initials are his in an affidavit to me dated November 16, 1972. Is that J.N.M. that's scrawled across this December 15, 1971 order?

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MR. ROSNICK: Yes, your Honor.

THE COURT: I think we are getting highly technical. If Mr. Tarrant can do it, okay; but if he can't, maybe Mr. Peterson can take a look at it and maybe he can state whether, to his personal knowledge, those are Mr. Mitchell's initials. In other words, I am sure my assistants who have worked with me for the past year could tell at a glance when they see my initials scrawled across some of my papers, so all I am saying is if I weren't available, which apparently Mr. Mitchell is going to be hard to contact, maybe Mr. Peterson can reply in the same way, if I weren't available, my law clerk could tell what my initials are.

MR. TARRANT: I will advise the Court directly what effort I am going to make to fill the request for the initials.

THE COURT: Maybe Mr. Peterson can say, "I have seen Mr. Mitchell scratch out his initials one hundred times, and the initials on this memorandum are his initials."

MR. TARRANT: I was going to advise the Court of what I will do in that regard. I do know counsel for Mr. Mitchell, William Hunley. Bill Hunley was head of the organized crime section before Henry Peterson took it over, so I will write to Bill Hunley, counsel for Mr. Mitchell, and ask Mr. Hunley if he could provide us with an exemplar of his initials, and if I fail there, I will move to Mr. Peterson.

THE COURT: The options are yours, so we can get a

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sufficient factual background to enable counsel to file his motion to dismiss and motion to suppress with enough underlying facts, which, at least in his opinion, support a grant of those motions.

Is that satisfactory?

MR. ROSNICK: Yes, it is. Thank you very much.

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C E R T I F I C A T E

I hereby certify that the within and foregoing is a true and correct transcript of notes taken by me to record all proceedings at the hearing held on _____, 19__, in the United States District Court for the District of Connecticut, at _____, Connecticut before the Honorable _____ United States District Judge.

_____
Official Court Reporter

Dated: _____, 19__

At: _____, Connecticut

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

THE UNITED STATES OF AMERICA	
- versus -	Criminal Action
WILLIAM R. BALOG, et al.,	No. H-298
THE UNITED STATES OF AMERICA	
- versus -	Criminal Action
ROGER L. SPINELLI, et al.	No. H-259

United States Court House
New Haven, Connecticut
October 23, 1973

B e f o r e:

Hon. ROBERT C. ZAMPANO, U.S.D.J.

A p p e a r a n c e s:

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Appearances (Continued):

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New Haven, Connectiuct

HAROLD ROSNICK, Esq.
855 Main Street
Bridgeport, Connecticut

THE COURT: I will take up the motion calendar.

MR. TARRANT: Is the Court ready for the motion calendar?

THE COURT: Yes.

MR. TARRANT: I believe the first matter that is on the list is H-299, United States versus Roger Spinelli?

THE COURT: Yes.

MR. TARRANT: There are three matters here, your Honor. The first is a motion brought by the government for reconsideration of an order of the Court, the second is a motion by the Public Defender's Office to withdraw as counsel and the third motion is the government's motion for determination of defendants in that case.

It perhaps would be more expeditious to take the determination of counsel first, if the Court please.

THE COURT: Yes.

MR. CLIFFORD: Your Honor, our office has filed a motion to withdraw for the defendant DeLucia on two grounds. I believe Mr. Santos has filed an affidavit with the Court, but the first, primary gound that concerned me was that we represented a co-defendant named Varvella. For some reason we were appointed to represent two of the defendants, and while there may not be a conflict between the defendants, I think it is unseemly for our office to represent two defendants in the same

action, even if we cannot determine whether or not there's a conflict.

THE COURT: Yes. I agree.

MR. CLIFFORD: I think we should pull out of that right now and square that away.

THE COURT: All right. Now, are you satisfied, however, that Mr. DeLucia probably needs court appointed counsel from what --

MR. CLIFFORD: I think so. I think that determination was made once, your Honor. I'm not aware of any circumstances that changed that particular --

THE COURT: Well, all right, we will grant the motion for the Public Defender to withdraw as counsel for the defendant John DeLucia for the reasons stated. How shall we proceed to get him an attorney?

MR. CLIFFORD: Well, the Clerk's office is now handling the assignments off the CJA list.

THE COURT: They are?

MR. CLIFFORD: Yes, your Honor.

THE COURT: I will ask the Clerk's Office to immediately file the appropriate moving papers and I will sign them and will appoint another attorney for Mr. DELucia.

MR. CLIFFORD: Your Honor, may I address myself to the fourth motion? I don't mean to cramp Mr. Tarrant's

position here, but I may add some background, that is, a motion for the determination of counsel for Michael S. and Phyllis Mahigel.

As your Honor may recall, I represented Mr. Mahigel on an unrelated matter -- or what may be an unrelated matter -- and I was not appointed to represent either himself or Mrs. Mahigel in this particular case -- I think primarily because we already represented the two other defendants in the case. For some reason that's not clear to me, your Honor, counsel was not appointed for Michael and Phyllis Mahigel. That may in part be our fault -- that we did not alert the Court to the fact that they would need counsel -- but, in any event, counsel was appointed for them -- as far as I am aware. Is that correct, Mr. Tarrant?

MR. TARRANT: That is correct.

THE COURT: So, at the present time, no attorney has appeared in behalf of the Mahigels?

MR. CLIFFORD: That is correct, your Honor.

THE COURT: Have they pleaded?

MR. CLIFFORD: I don't believe a plea was entered. Michael, was a plea entered?

MR. MAHIGEL: I dont' think so.

MR. CLIFFORD: No, your Honor.

THE COURT: What is the status of this case,

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Mr. Tarrant?

MR. TARRANT: Your Honor --

THE COURT: I mean, we have motions here for discovery and apparently I have entered orders and some defendants have not pleaded. Refresh my recollection.

MR. TARRANT: Your Honor, let me give a little background and history in this case. When an indictment was originally returned the defendants appeared before Judge Clarie in Hartford, I was not present at that time, and it was my understanding that they had -- pleas had been entered before Judge Clarie and that it had been set down for motions. Subsequent to that time the case was transferred from Hartford to New Haven and it came before Judge Newman. Mr. and Mrs. Mahigel appeared before Judge Newman and requested the appointment of counsel. They were asked if they would file an affidavit of indigency. At that time they stated that they would not care to file an affidavit of indigency because of some tax matters that were then pending and that statements they may make under oath may come back to haunt them.

So at that time the Public Defender's Office was asked to advise Mr. and Mrs. Mahigel relative to their affidavit of indigency, and that is where the matter stood. Subsequently Judge Newman disqualified himself in Case H-299 and, as happenstance would have it, the problems of Mr. and Mrs. Mahigel

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relative to representation by counsel were somewhat forgotten.

When the Public Defender's Office made the motion relative to Mr. DeLucia -- and I received a copy of it -- it jogged my memory that perhaps we should look again to the situation of Mr. and Mrs. Mahigel, and it is for that reason that I brought on this motion for the determination of counsel relative to them.

Now, it is my basic feeling that the Public Defender's Office may have been counselling --

THE COURT: All right. How do counsel line up here? Is everyone satisfied that all defendants are represented except -- now -- Mr. DeLucia and Michael and Phyllis Mahigel? Is that the status of things?

MR. TARRANT: That is my understanding to date, your Honor.

THE COURT: Is that your understanding, Mr. Clifford?

MR. CLIFFORD: Yes, your Honor. Mr. Santos in my office is handling this case himself, but as I understand it, that's true.

THE COURT: All right. Now, what is the situation with the Mahigel's signing the CJA form? Is there a problem?

MR. CLIFFORD: If I may go into that, your Honor? I have been appointed to represent them on two other matters and

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we have had that same problem every time we got down to the CJA form.

THE COURT: How did I handle it before?

MR. CLIFFORD: Well, the way, as I recall -- the way I handled it was, I represented to the Court certain facts to be true, and I think on the basis of that representation there was the appointment made. As I recall, your Honor -- and I don't have the file in front of me, but -- there is a rather large tax lien that was placed on the Mahigels simutaneously with -- or very shortly after -- the commencement of this action.

THE COURT: Yes. I think I had some motions --

MR. CLIFFORD: And so that --

THE COURT: -- on that.

MR. CLIFFORD: -- it was quite obvious that the CJA form could in some way be relevant to the tax lien and could jeopardize the defendants. It seemed to me that they had --

THE COURT: Let me cut right through this. Did I appoint counsel for them --

MR. CLIFFORD: Yes, you did.

THE COURT: -- in the other cases?

MR. CLIFFORD: Yes. I believe you appointed me. Certainly, on the matter that was before your Honor. And I was appointed on another case by Judge Clarie on the same basis.

Isn't that correct?

MR. MAHIGEL: Yes.

THE COURT: Is Mr. and Mrs. Mahigel here?

MR. CLIFFORD: Yes. Both of them are here. And the record should reflect Mr. and Mrs. Mahigel --

THE COURT: Mr. and Mrs. Mahigel, I ask you this: Whether or not your financial position has changed so that now you can afford a lawyer?

MRS. MAHIGEL: No.

MR. MAHIGEL: We're divorced now, so I can't answer for her.

THE COURT: Let me ask you individually. Can you afford a lawyer, Mr. Mahigel?

MR. MAHIGEL: No. No, sir.

THE COURT: And you wish a court-appointed attorney?

MR. MAHIGEL: Yes, sir.

THE COURT: Mrs. Mahigel, can you afford an attorney?

MRS. MAHIGEL: I can't, your Honor.

THE COURT: Perhaps we ought to have two attorneys appointed.

MR. CLIFFORD: Oh, yes, your Honor.

THE COURT: We will get three attorneys appointed: one for Mr. DeLucia, one for Mr. Mahigel and one for Mrs. Mahigel Do you recommend Bridgeport attorneys? Where do you live, Mr.

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and Mrs. Mahigel?

MRS. MAHIGEL: Stratford.

MR. MAHIGEL: I live in Bridgeport.

THE COURT: And you live in Bridgeport. Well, it is not necessary, but perhaps we should try to get Bridgeport attorneys.

Mr. and Mrs. Mahigel, I will ask you this question: Where can the attorney get hold of you? First, Mr. Mahigel. After we appoint him he will want to get hold of you. Where can he do so?

MR. MAHIGEL: 365 Churchill Road, Fairfield.

THE COURT: Do you have a phone?

MR. MAHIGEL: Yes.

THE COURT: What is the telephone number?

MR. MAHIGEL: 372-4751.

THE COURT: Mrs. Mahigel, how could your attorney get hold of you?

MRS. MAHIGEL: More than likely, at work would be best.

THE COURT: Where is that?

MRS. MAHIGEL: The Rita Personnel Agency.

THE COUPT: Where is that located?

MRS. MAHIGEL: It's 855 Main Street, Bridgeport.

THE COURT: Do you have the phone number?

MRS. MAHIGEL: Yes. It's 366-3801.

THE COURT: We will have an attorney immediately contact you and, also, Mr. DeLucia. Let's get all the appearances squared away.

Now, let me ask you this, Mr. Tarrant. Should we be doing anything at all until all counsel are present? Is there anything with respect to your first motion that counsel for the Mahigels or counsel for Mr. DeLucia may want to say anything about? Or is this limited solely to Spinelli?

MR. TARRANT: Your Honor, undoubtedly, all counsel would like to be heard if given the opportunity, I am sure.

This is a motion brought on by the government in response to certain orders that were given by this Court relative to a motion that was brought on specifically by Mr. Spinelli and no one else. None of the other defendants have joined in the particular motion to which I am addressing myself to today.

THE COURT: Do we gain anything -- or, possibly, lose anything -- by not waiting until all the attorneys are involved? All the attorneys involved are here -- MR. Flynn, who do you represent?

MR. FLYNN: I represent the father and the son. Their names are Moretti, your Honor.

THE COURT: Do you feel that the government's motion to reconsider, even though brought through Roger Spinelli,

might be something you would like to address yourself to?

MR. FLYNN: Your Honor, I have been relying strictly as a question of law and I don't know that anyone has to be present to resolve -- everyone has to be -- I don't have anything to say on it, frankly, your Honor. I have been involved in other matters where this issue has been raised and adjudicated in the Second Circuit. I understand what the government is asking to do. I think it's purely a question of law, frankly.

THE COURT: Would you like to say anything?

MR. ROSNER: I am Mr. Rosner from Sigmund Miller's office -- represent the defendant Spinelli.

I believe there is a question of fact -- primary question of fact -- which, although it cannot be adjudicated at this time, the issue of whether it exists or not must be raised at this time in order to properly address ourselves to Mr. Tarrant's motions.

THE COURT: Can you see any reason why your motion may affect other defendants?

MR. ROSNER: It would affect everyone equally.

THE COURT: In other words, this motion, in your opinion, would affect the other defendants as well as Mr. Spinelli?

MR. ROSNER: Yes, it applies equally to all defendants.

THE COURT: Would you say that's true?

MR. TARRANT: No, your Honor. This goes to, actually, the heart of the evidence upon which this prosecution is based -- the electronic surveillance.

THE COURT: I think maybe I had best wait, then, until everyone has an attorney and everyone can be heard.

Now, one attorney says, well, it's a question of law. But even that may involve my getting the benefit of other attorneys submitting me law. But we have the Miller office claiming there are questions of fact here, and if that is so, I better have all the attorneys before me. I think we have to get moving on this case.

Is anyone incarcerated in this matter?

MR. TARRANT: No, your Honor.

MR. FLYNN: Your Honor, not only is no one incarcerated, but there will probably be a dispute amongst the various counsel. Some of these issues that are raised at this level are apparently at the level of the Supreme Court of the United States. One is the Chavez case out of, I think, the Tenth Circuit, then there's Giordano out of the Fourth -- Third or Fourth -- there will be another one out of this circuit at least within the next 30 days. Because of the conflicts among circuits your Honor is going to be, in effect, asked to rule on issues that are -- that the Supreme Court has decided that it wishes to entertain. I don't want to go forward with the case.

I'm some -- somewhat of a peculiar posture. I don't want to go forward with the case if there is any likelihood that the Supreme Court is likely to say that it ends insofar as my clients are concerned. I don't speak for everybody else in that regard -- other defendants might have other positions that are different from mine -- but it's going to be a real bucket of worms by the time we get -- if we begin to process it. Because everybody will have a different posture and a different position that they will want to take because of that pendency. I don't know if Mr. Tarrant agrees with me.

THE COURT: What is the status of the cases that are before the Supreme Court? Has the Supreme Court granted cert?

MR. TARRANT: Yes, your Honor.

MR. FLYNN: Yes, your Honor.

THE COURT: What do you think is a wise use of our time?

MR. TARRANT: Let me say what I have already done. The electronic surveillance, which is the issue here, supports two prosecutions which are presently before you, Judge, H-298 and H-299. In both cases I circulated to all counsel an application to your Honor to stay further proceedings pending the resolution of the questions before the Supreme Court. In H-298 all of the defense counsel assented and your Honor approved that application.

In H-299 Mr. Miller has -- or representing Mr. Spinelli has -- seen not to assent to it, has not circulated to the other attorneys and has chosen to go forward with his motions, and it is his going forward which has brought us into the posture that we have today.

THE COURT: I think this is what we should do. First of all, we will get the attorneys for all defendants who are not represented. You should file a motion for a stay -- I mean, if you want to.

MR. TARRANT: I first sought to get the concurrence of all defense attorneys.

THE COURT: Right.

MR. TARRANT: And in -- in one case it's happened; in the other cases it's been shortstopped and I don't know where.

THE COURT: That still wouldn't prevent you from filing a motion addressed to the discretion of the Court based on certain facts. Then I will hear from the attorneys. Some will get upset and say they have certain objections and some will get up and say they do have objections, and based on that ruling first, then I will go on to the other motions.

Why don't we give the attorneys a bit of time. Rather than next Monday, which only gives them a week -- or less than a week -- perhaps I should have this go over until the next criminal motion calendar, which would be November 12th.

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MR. ROSNER: Is that November 12th, your Honor?

MR. FLYNN: I think that, your Honor, is the day that everybody else in the State of Connecticut will be observing Veterans Day.

THE COURT: Do I have a calendar?

THE CLERK: I'll have to check.

THE COURT: We will have it stand over until my next criminal motion day and you will get a calendar whatever date that is. In the meantime, the government is permitted -- if it wishes -- to file a motion for a stay and I will set that down for the same day.

I would appreciate in your motion, Mr. Tarrant, if you would explain to me just what has been appealed, when cert was granted and what your best estimate is on arguments and so forth and so on.

MR. CLIFFORD: Your Honor, I was just going to say that I personally handled the matter that's presently up before the Supreme Court. Cert has not been granted, but I think we have been placed in the cardboard box until the King-Chavez cases have been resolved, and we have been through -- we have been through one of these all the way through the Second Circuit. It's a very time-consuming process and I think the interests of everyone would be probably -- at least, that's my personal opinion -- we'd all be better off just to wait to see

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what the Supreme Court does. I think the government should put this in a position -- merely as a suggestion -- that maybe they ought to stipulate or state that the adverse rulings on the King and Chavez case, which is the two -- either the Lindenbaum tap or the Wilson tap, which are the two warrants that are usually in question -- whether or not an adverse ruling will be dispositive of the government's case in terms of dismissal.

THE COURT: Why don't we see what the government's motion does say.

MR. CLIFFORD: All right, your Honor.

THE COURT: And then I will hear you on my next criminal motion calendar.

So, all motions will stand over except 3 and 4. Three is granted and 4 is granted. And we will have counsel appointed.

MR. CLIFFORD: Thank you, your Honor.

MR. FLYNN: Thank you, your Honor.

-ooOoo-

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

- -x

THE UNITED STATES OF AMERICA

- versus - Criminal Action

WILLIAM R. BALOG, et al. No H-298

- -x

THE UNITED STATES OF AMERICA

- versus -

ROGER L. SPINELLI, et al.

- -x

United States Court House
New Haven, Connecticut
November 12th, 1973

B e f o r e:

Hon. ROBERT C. ZAMPANO, U.S.D.J.

A p p e a r a n c e s:

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JOSEPH M. BROPHY, Esq.
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Bridgeport, Connecticut

W. PAUL FLYNN, Esq.
132 Temple Street
New Haven, Connecticut

MR. FLYNN: YOur Honor please, I represent the defendants Paul Moretti and Paul Moretti, Jr. Since I am engaged in another matter in which the same subject matter is pending before the Supreme Court of the United States and since I understand that theSupreme Court is only going to entertain three, I join in the government's motion for a stay. I don't want to argue and I would ask the Court to be excused.

THE COURT: All right, your comments are made for the record. Are there any other attorneys who wish to be heard?

MR. ROSNICK: Yes, your Honor.

THE COURT: What is your position?

MR. ROSNICK: Well, if your Honor please, we will be objecting to the motion for stay on behalf of the defendant Roger L. Spinelli.

THE COURT: All right. Then, I will hear that. Would anyone else like to comment?

MR. BROPHY: Attorney Joseph Brophy. I represent the defendants Michael and Dana Piazza. I will be objecting to the motion,also.

THE COURT: Any other counsel wish to be heard. We have some objections, so I will hear --

MR. TARRANT: Well, your Honor --

THE COURT: -- the proponents.

MR. TARRANT: -- my name is John Tarrant, representing the United States.

THE COURT: Which motion do you want to argue first?

MR. TARRANT: Well, I'm beginning -- I think that the motion to stay the proceedings is perhaps the most proper at this time -- at the outset.

THE COURT: All right.

MR. TARRANT: The United States has moved to stay further proceedings in the case of United States versus Spinelli for the reason, principally, that, based upon the wiretap papers that have been filed in this case and the affidavits that have been submitted from the responsible officials in the Department of Justice, that is, responsible for the electronic surveillance, a factual pattern has arisen which is similar to two cases which have been decided in this district -- to three cases which have been decided in this district, in the Second Circuit Court of Appeals, which have been in favor of the government, and similar to two cases which are presently before the Supreme Court on writ of certiorari which have been decided against the government, and it is our feeling that we will stand or fall pretty much by the decisions of the Supreme Court on the two cases pending before it presently having to do with electronic surveillance such as exists in this case.

THE COURT: Have arguments been held in those cases?

MR. TARRANT: No, your Honor.

THE COURT: Certiorari was granted?

MR. TARRANT: Certiorari was granted and briefs have been filed, but it has not been set down for argument. The two cases are Giordano and Chavez.

The issues -- there's one issue in each case which is different and both issues are pertinent to our considerations in this case.

THE COURT: What issues are similar and what issues are different?

MR. TARRANT: Well, the issue -- the principal issue in Giordano has to do with the proper authorization of the wire interception.

Factually, in that case an application was presented to the office of the Attorney General in Washington. However, the Attorney General's memorandum was initialed by a subordinate -- a Mr. Lindenbaum. The memorandum directed the Assistant Attorney General for the Criminal Division to authorize the agent in the field to apply for the application. A letter was dispatched from the Criminal Division over the name of Will Wilson. It turned out that Will Wilson did not sign the letter, it was signed by one of his subordinates. So the issue thus

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raised framed in that case is wh[illegible]er the authorization procedures followed by the Department complied with the requirements of Title III of the Ombibus Crime Bill.

The second issue raised by the Department is whether, in the event that the procedures were not proper, should suppression be the ruling.

In the second case, that is, Chavez, the application was presented to the office of the Attorney General and he in fact initialed his memo to the Assistant Attorney General for the Criminal Division directing him to authorize the field attorney to apply for the interception order. A letter was dispatched from the Criminal Division to the field attorney over the signature of Will Wilson.

Now, it is not clear in the factual recitation on appeal as to whether or not Will Wilson actually signed that letter or not. But in any event, the attorney -- such as myself -- who made application for the wire intercept recited in his application that he was doing it -- doing so on the authority of Will Wilson, and in subsequent argument the government propounded that the authority emanated from the Attorney General.

Now, in the Chaver case the Court held that the recitation of the wrong authority in the application by the attorney was improper.

THE COUFT: Now, what are the facts in our case --

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at least, from the government's point of view?

MR. TARRANT: Well, from the government's point of view, the facts are that an application was presented to the office of the Attorney General, and the Attorney General himself, John Mitchell, initialed the memorandum to Henry Peterson, directing Henry Peterson to authorize me to make the application. At the time, Henry Peterson was an Acting Assistant Attorney General.

A letter was dispateched from the Criminal Division over the signature of Henry Peterson authorizing me to make the application -- which application I made before Judge Blumenfeld -- and in my application I recited that I was doing it upon the authority of the -- Henry Peterson, and attached the letter that he sent to me.

THE COURT: So, at first blush -- and without really analyzing your statements -- the Chavez case is authority that may be used against you?

MR. TARRANT: That is correct, your Honor. And it would appear that in deciding the Giordano case -- in deciding the Giordano case, which has the subordinate of the Attorney General's Office and the subordinate Assistant Attorney General's Office both acting, it puts before the Court the procedures followed by the Department of Justice. And while this may be overstating the situation, I don't see how the Supreme Court can address itself to the characters that acted in that case and not

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speak, at least in some general fashion, as to the procedures.

So that, in that sense, Giordano should also be applicable to the case that we have here.

THE COURT: Do I take it that if there is a -- shall we say a definitive -- ruling by the Supreme Court on the issues raised as you see them, you would probably find yourself without a case here in Connecticut -- or, at least, without that evidence?

MR. TARRANT: That is correct, your Honor. The two cases -- that is, these two cases, Giordano and Chavez -- which the Supreme Court is going to consider this term, are both against the government. So, should they stand, it is my appraisal at this point that our wiretap would fall. And if our wiretap falls, it is likewise my impression at this time that any evidence that would support the indictment would fall with it.

THE COURT: What is your best estimate, if I deny to motion to stay, as to the length of time this case would take?

MR. TARRANT: Well, that -- that -- it's really a difficult question without bringing before the Court's -- at least my idea of what we at least have before us.

THE COURT: Well, if you are going to try the case for the government, you must have some idea how many witnesses you are going to call.

MR. TARRANT: Well, as far as the case is concerned?

THE COURT: Yes.

MR. TARRANT: The trial of the case would take, at least in its present form, it would take two to four weeks.

THE COURT: About how many witnesses would the government be calling, offhand?

MR. TARRANT: I'd say about 35 to 40.

THE COURT: All right. Now, I notice in your brief for a motion to stay you set forth fully the factual basis, but you fail to set forth any precedent and tests which the Court should apply. What are the tests that I should apply in deciding this motion for a stay?

MR. TARRANT: Well, my underlying thinking in offering the motion was that it's quite possible in letting -- if the Supreme Court chooses to let the present cases stand on the rulings which are now before the Supreme Court, that any further action on this case from now 'til that time will be a nullity. Because should we lose there, we're out.

THE COURT: Yes. I know. But is that a proper basis for the granting of a motion to stay? That's all I'm asking. Do you have some legal precedent?

MR. TARRANT: No, I don't, your Honor. I'm sorry.

THE COURT: Is it because there is none or you

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haven't researched it?

MR. TARRANT: Well, I have not -- I have not -- quite frankly, I haven't researched that.

THE COURT: All right. What would counsel who are in opposition to Mr. Tarrant's motion like to say.

MR.ROSNICK: Well, if your Honor please, we would have no objections to the motion for stay if the matters before the Supreme Court -- if they were found adversely to the government, they would be dispositive of the issues in our matter -- or dispositive of the case. Because if they're not going to be, Mr. Tarrant has indicated to me that -- at least for the defendant Roger Spinelli -- he may decide to proceed indepently of the evidence obtained from the wiretap -- or the fruits of that wiretap evidence against Mr. Spinelli. So for that reason alone I feel that we must go forward. It's at least -- it's a year and a half to date, and the matters before the Supreme Court aren't going to dispose of the Roger L. Spinelli matter in particular and I ask that we go forward. Further --

THE COURT: Now, just on that point, did you read something into what Mr. Tarrant said to me earlier that I have not? Or did I not analyze it the way you did? For example, I asked him that very question: If Chavez and Giordano are upheld, what would be the results down here? He said, in his opinion the wiretap would fall, and if the wiretap falls, the case falls.

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Now, did you read into his statement an exception to your client?

MR. ROSNICK: No, I haven't read into that statement. I had pre-motion -- or pre-argument discussion with Mr. Tarrant, who indicated that he may decide at that time -- at the time that there's an adverse ruling against the government -- to proceed independently against Mr. Spinelli. The context in which it was brought up was that I asked Mr. Tarrant, "If there was no objection to the stay would you state for the record that if there is a definitive ruling you will move to dismiss the action against Roger Spinelli?" and he said no.

So for that reason I will have to object to the motion for stay.

MR. TARRANT: Your Honor, you Honor perceived my response quite correctly. You framed it in the terms of probability, and probably the case will fall should the rulings be adverse to us. What counsel is asking for is promise; that if these two cases are decided againsnt the government, that I will definitely dismiss, and I think what I would properly have to do at that point is evaluate the evidence remaining and make a determination upon the remaining evidence.

THE COURT: What else would you like to say?

MR. ROSNICK: Your Honor please, I would ask him to make that evaluation now.

THE COUPT: All right. And then there was another

point you wished to make?

MR. ROSNICK: Well, your Honor, there's presently before you a motion for discovery and inspection. I don't see how we can entertain this motion to stay prior to the disposition of the discovery and inspection motions.

THE COURT: Have you discussed the compliance with that motion for discovery and inspection under the rule?

MR. ROSNICK: I believe the motions were filed prior to the rule, but I will be glad to discuss it with Mr. Tarrant.

THE COURT: Well, the rule is applicable.

MR. ROSNICK: I have no objection to discussing them.

MR. TARRANT: Your Honor, if I may put one more thought before the Court? There has been an enormous amount of discovery completed in this case.

THE COURT: What is pending?

MR. TARRANT: The motion to reconsider deals with an order that entered by this Court back in July.

THE COURT: Yes. You said that several times in your moving papers. Now, I have no notes and poor recollection, but I thought that we met in chambers and that the orders that were framed were by agreement of counsel. Let me give you my recollection on it -- which, admittedly, is very

poor. I remember meeting in chambers with counsel, and the question was: Can we take the deposition or can we interview Mr. Mitchell? I thought someone from the government stated: Well, we would like to avoid that, but I know Mr. Huntley, and he is counsel for Mr. Mitchell, and I am sure that I can get an exemplar of the initials of Mr. Mitchell through his attorney. With respect to Mr. Peterson, that's no problem. I am sure I can get exemplars, because Mr. Peterson is with the department.

Now, I may be wrong, but I thought that is the way the order came about -- by agreement.

MR. TARRANT: Yes, your Honor. Actually, we met here -- we met here in open court -- and I don't think I was so -- quite as positive in my ability to obtain these items, but I did say that MR. Huntley represented Mr. Mitchell and that I therefore could contact Mr. Huntley. Mr. Peterson is -- was, and still is -- employed by the Department of Justice, and, therefore, my request would go directly to him. The purpose -- or the basis for my motion to reconsider has been a difficulty in obtaining the exemplars themselves. What I did file was an affidavit from Mr. Lindenbaum, who identifies the initials of Mr. Mitchell on the memorandum. I filed an affidavit from Mr. Peterson, saying under oath that the signature on the letter is in fact his. I have not been able -- I have pursued this and I have not been able to obtain either from Mr. Mitchell or from

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the Department of Justice the actual exemplars that you requested, nor have I been able --

THE COURT: Let's take them in order. What is your recollection -- and what is your feeling -- bout the exemplars and the initials of John Mitchell? Are you now satisfied?

MR. ROSNICK: No.

THE COURT: What makes you think you think --

MR. ROSNICK: I'm not satisfied beyond a reasonable doubt. I would suspect that they are in fact his initials, but I think I have a right to have a handwriting exemplar in view of other matters that have come before district courts. In particular, I believe there's been situations where Henry Peterson, at least pro forma, has made representation that certain signatures were in fact his when it turned out that they were not. And I don't believe -- and I think there's a matter, U. S. v Viggi in the Eastern District of Michigan which has held affidavits are not the proper method to satisfy the Court of the signatures.

THE COURT: Well, with respect to the motion to stay proceedings have you filed a brief?

MR. ROSNICK: I have not, your Honor.

THE COURT: Now, let me stay on that motion. I will hear from other counsel to the motion to reconsider.

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MR. BROPHY: Your Honor, as to the government's motion to stay, my position's a little bit different than the others. Naturally, I'm concerned with what the Supreme Court's ruling will be in reference to the wiretaps and these various procedures, however, this is an old case. There are several motions from everybody before the Court -- for suppression of evidence and to dismiss -- and it seems to me that this Court can well study these cases and come to that opinion also and make a decision.

THE COURT: Now, let's get that squared away. What is pending, now for decision? The motion to dismiss, is there a motion to dismiss?

MR. BROPHY: There is a motion -- I have motions to suppress that are still pending, I have motions to dismiss that are still pending.

THE COURT: When you say still pending --

MR. BROPHY: They have not been heard.

THE COURT: They have not been argued?

MR. BROPHY: No, your Honor.

THE COURT: Why not? Why have they not been put down for argument?

MR. BROPHY: I assume we were waiting for discovery to be finished. My big -- the other aspect of my particular case, your Honor, is -- although as part of my motion -- is the legality of the wiretap and the bill itself and the procedures.

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My main point in the suppression argument falls a little bit away from this in that it's my contention that, to my clients, the search of the house that turned up the evidence, regardless of what happens to the wiretap cases, is still -- falls short of probably cause for making such a search.

THE COURT: What is the status of that motion? Has it been filed?

MR. BROPHY: Yes, your Honor, it has beenfiled.

THE COURT: All right. Who are your clients?

MR. BROPHY: Piazza. Michael and Dana Piazza.

THE COURT: First of all, I have to get these motions moving here and insist on briefs and procedures that are going to be followed, so I will order counsel for the government to submit a supplemental brief with some legal authorities for me within seven days, and I would want briefs from counsel who are opposing this in seven days. Counsel who do not object, of course, they don't have to submit a brief -- unless they want to. I will leave it to their choice.

Now, this motion for discovery and inspection, what is left open on that?

MR. BROPHY: I have no interest in that.

THE COURT: All right. What --

MR. ROSNICK: Well, if your Honor please, there are two things that remain open -- well, three things, actually:

handwriting exemplars of Mr. Peterson and initial exemplars from Mr. Mitchell and, also, the procedure by which the Department determines the ranking of First Assistant and Second Assistant in the Department of Criminal Justice. Because an issue present here that's not present in the matter before the Supreme Court is, in the event there is a vacancy in the position of Assistant Attorney General, how is the vacancy filled. In this situation, pursuant to the Code of Federal Regulations -- or apparently pursuant to them -- appointed Mr. Peterson as the First -- First Assistant who steps into the Assistant Attorney General. However, we have not determined to date how he became ranked First Assistant.

Mr. Tarrant at that hearing before you on the motion for the deposition -- for leave to take a deposition -- indicated that he saw in the Washington, D. C. telephone book a designation of Mr. Peterson as First Assistant, and that's how he designated him -- as First Assistant -- and Mr. Shapiro as Second Assistant. He told me that he would find out the exact procedure how they became -- whether it's by tenure, by appointment of date, or what procedure -- and I haven't received that to date.

THE COURT: What is your recollection with respect to the background before I issued those orders -- the background of argument and the circumstances surrounding the

issuance of the orders? Because, frankly, I don't recall researching the issue as to whether or not I could order the deposition of Mr. Mitchell, which leads me to believe that recommendations were made in open court or in my chambers which led me to put those orders on the record. What is your recollection?

MR. ROSNICK: We were before you on leave to take the deposition of Henry Peterson, and by agreement I would be satisfied if I could obtain the handwriting exemplars of Mr. Mitchell and Mr. Peterson at that time together with the procedure by which a ranking Assistant steps into the Acting Assistant Attorney General's position.

THE COURT: Then what happened? Was it argued before me?

MR. ROSNICK: Well, that's how we left it at that time before you. That he was to obtain handwriting exemplars and was to obtain the procedure.

He has now filed a motion to reconsider and that he has not obtained -- been able to obtain the handwriting exemplars and has -- well, apparently not brought before you the issue of the procedure how a ranking assistant steps into the Acting Assistant --

THE COURT: How about the latter point, is that a problem?

MR. TARRANT: Yes, it is, your Honor. I have complied to the extent that I have filed a supplemental affidavit from an individual by the name of Saul Lindenbaum, who was John Mitchell's Executive Assistant. Mr. Lindenbaum identifies the initials on the memo in question as being the initials of John Mitchell. That is what I have done affirmatively in an attempt to comply with this order.

Now, with regard to the exemplars of Mr. Mitchell, exemplar of Mr. Peterson's handwriting and a statement of how a First Assistant becomes -- is appointed within the Criminal Division, I have not been able to secure that information. And it is because of that inability to secure it that I am asking this Court to reconsider.

THE COURT: Maybe I'm missing something here, but you mean you -- you have a superior in the Department of Justice and you are unable to obtain his exemplars -- although through an agreement, because my recollection is that I didn't rule on this, I may have issued an order, but, that, when you made certain representations in open court, I went along in the form of an order -- now are you telling me that your superior officer in the Department of Justice refused to give you an exemplar of his signature?

MR. TARRANT: Yes, your Honor.

THE COURT: Well, this, in a way, brings us back

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to your motion to take the deposition.

MR. ROSNICK: I believe it would, your Honor. We agreed that we take the deposition of Mr. Peterson wherever he desired within the United States' boundaries.

THE COURT: How about Mr. Mitchell, what is your position on that?

MR. ROSNICK: When the motion to dismiss eventually comes before the Court -- which I suspect that it will -- at that time we will subpoena Mr. Mitchell and Mr. Peterson before the Court to discover the factual situation on the authorization. All I want from both Mr. Mitchell and Mr. Peterson at this time is an example of their signatures, their initials and their handwriting. I don't believe that that's such an unreasonable request and one so difficult to comply with.

THE COURT: Well, Mr. Tarrant said he is unable to comply and has asked me to reconsider it.

MR. TARRANT: If it please the Court, I have provided this file -- the Clerk's file -- with an affidavit -- both Mr. Peterson and Mr. Mitchell, under oath -- which affidavit contains their signatures, signatures witnessed by a person who is authorized to administer an oath.

THE COURT: What about that? Can't your handwriting expert use the originals of those affidavits?

MR. ROSNICK: What am I to compare it with?

THE COURT: Compare it with the signature you're challenging.

MR. ROSNICK: He supplied me with an affidavit to the effect that the initials appearing on the memorandum -- well, attaches a copy of Attorney General's personally initialed memorandum of that date to Henry Peterson reflecting his favorable action on the request. It doesn't say anything to the effect that those are in fact his signatures or his initials.

THE COURT: Now, wait a minute. Wait a minute. Didn't you just tell me a moment ago that you submitted some affidavits in this courthouse that bears the signature of Mr. Peterson as sworn to by an authorized person who can take oaths?

MR. TARRANT: Yes, I did, your Honor.

THE COURT: Where is that affidavit?

MR. TARRANT: That would be in the Clerk's file, your Honor.

THE COURT: Well, I have the file right here in front of me, yes, and it does have a handwritten signature of Henry Peterson, subscribed and sworn to before an Audrey Grump with a seal. Now, why do you need more than that? There it is.

MR. ROSNICK: Mr. Peterson?

THE COURT: Yes.

MR. ROSNICK: Again, there is the matter -- the name of the case is United States versus Bonham in the Eastern

District of Michigan where the same procedure was followed; where Mr. Peterson upon request -- not upon request -- but the government submitted an affidavit as to validity or authenticity of the signature appearing in the various documents used to support the application for the wiretap. At that point the Court indicated that Mr. Peterson is acting as Assistant Attonrey General, in no event is capable of making that authorization, and by dictum indicated, in any event, affidavits are not the proper method in which you would go about invalidating that signature.

THE COURT: But we are not reaching those issues. The issue I am faced with is your request to get Mr. Henry Peterson's signature. Counsel has stated that there is one right in the file. I have looked it up and, sure enough, there it is. Now, that is the only issue before me.

MR. ROSNICK: On the signature, I won't argue further-- on his signature.

THE COURT: All right.

MR. FLYNN: Wait a minute. Your Honor, I believe the fact of the matter is that no handwriting analysis can be made off a single signature for comparison. The reason was to get exemplars. And he was present at that hearing. The purpose of asking for the exemplars was to avoid the production of Mr. Mitchell, Mr. Peterson and Mr. Lindenbaum to a deposition as had been ordered in the Southern District of Florida. I think the

practical effect is that counsel made a fair representation in court, and when he submitted it to Washington, they said no.

THE COURT: Yes, that may be. But I wasn't under the impression that there was going to be a long series of handwriting exemplars. I thought it was an exemplar of Mr. Peterson's signature, and the request for that has now been withdrawn -- at least by Mr. Spinelli's attorney.

Now tell me about Mr. MItchell. You have been unable to get Mr. Huntley to obtain his --

MR. TARRANT: Either his initials or his handwriting, yes, sir.

THE COURT: We have his handwriting right here in the file.

MR. TARRANT: His handwriting was an affidavit similar to the one of Mr. Peterson that is on file. I believe I submitted it at the same time.

THE COURT: What is your position on that?

MR. ROSNICK: What's -- can you please repeat what's in the file? Is it just the signature or is it an actual exemplar of his handwriting?

MR. TARRANT: There is a memorandum -- an affidavit, excuse me -- an affidavit which I believe was submitted to the Court on July 6, 1973, an affidavit of John Mitchell, his signature is there, and it was witnessed by an individual by

the name of Rose L. Shiff who witnessed the signature on the 16th of November, 1972.

MR. ROSNICK: It doesn't satisfy me, your Honor. It's just a signature.

THE COURT: Well, what did you want?

MR. ROSNICK: I want a handwriting exemplar.

THE COURT: Tell me the difference between a handwriting exemplar and a signature.

MR. ROSNICK: Well, as Mr. Flynn indicated, maybe a signature wouldn't be enough to comapre.

THE COURT: Are you changing because you heard Mr. Flynn? This has all been a matter of ruling.

MR. ROSNICK: It was a matter of Court rulings.

THE COURT: Have briefs been filed on all this business? You're citing cases from other jurisdictions, did you file a brief?

MR. ROSNICK: No, your Honor.

THE COURT: I don't know how the case got into this posture, because I am just not satisfied -- and I will take the blame myself -- but from now on I don't want the clerk to accept any motions -- and this is about the eighth time I have said it -- unless there are briefs attached. Motions shall be ordered off for failure to comply with the Court's order, and the orders of this district, that motions shall have briefs

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attached or they will not -- and should not -- be accepted.

I think, first of all, what I would want is copies of all the prior doings in this court. I will ask the government to supply them. I also want briefs.

I will give counsel seven days to file briefs on all motions pending. If there are no briefs appended to motions, they are going to be stricken for failure to obey the Court's order.

Now, I mean briefs on everything that is pending: motions to dismiss, motions to suppress, motions for discovery and inspection, motion for stay of proceedings, motions to reconsider. And I want factual background set forth, with law, precedents. I am not going to do all this research for counsel.

MR. FLYNN: I know I wouldn't comment on it earlier, but -- I join in it -- but if the Court accepts the request for a stay, the Court and the law clerk and all of counsel will probably avoid about a hundred pages of briefing that the Court would have to go through. And I am making that representation on the basis of a typewritten brief on a similar subject matter that was filed in the Second Circuit and ruled on.

THE COURT: Let me ask you this, Mr. Flynn. Why did you agree to the stay if statements were made -- I assume to you as well as other counsel -- that, in the event the Chavez and Giordano cases are upheld, the government may still prosecute

your client?

MR. FLYNN: No, your Honor. I'm certain the government's not going to prosecute on this indictment. If the evidence is suppressed, it would have contaminated the entire grand jury proceeding. Secondly, the evidence against my clients is -- insofar as I'm aware -- exclusively evolves off of some wire intercepts. But, in any event, the government's initial indictment will have been contaminated, and if they are going to proceed on some independent course of conduct, they're going to have to go back and eliminate information that caused the grand jury to indict in the first place. Which involves this wiretap.

THE COURT: I think you do make a valuable suggestion -- and I appreciate it -- that what I will order, as I ordered before, is the briefs on the motion for stay to be filed within seven days. In the event I deny the motion to stay, then I will set these other matters down for oral argument -- with full briefs expected. I will expect the briefs one week from today from all sides. The rest of the motions shall stand over until I decide the motion for a stay. (Short recess)

MR. TARRANT: Your Honor, may I be heard for just one more minute?

THE COURT: Yes.

MR. TARRANT: In your Honor's absence Mr. Rosnick and I spoke relative to the position that the United States would

take should the Chavez and-or Giordano cases be decided against us, and out of that discussion I would make this statement for the record. That, in the event that Chavez and-or Giordano are decided against us and the wiretap in this case is thrown out and, thereby, probably all of our evidence would be thrown out, as attorney for the United States, in fairness to all the defendants I would make every effort to terminate the prosecution at that time. But to make a promise on the record that I would dismiss the indictment when dismissal calls for the permission of the Department, I cannot make that representation.

THE COURT: Does that statement, as phrased, in any way change your position?

MR. ROSNICK: May I ask one question? Mr. Tarrant, you will make your best efforts, and you represent to the Court that you will make your best efforts, to have the indictment dismissed?

MR. TARRANT: I do.

MR. ROSNICK: Yes, that would satisfy me, and I would not object to the stay.

THE COURT: Now, that just leaves one other attorney, though, who is not here. Did he leave before your own conference during the recess?

MR. ROSNICK: He indicated that he would not be filing a brief on the matter because he's not going to pursue

the objection to the motion to stay, so that I would assume that he wouldn't object at this time either.

THE COURT: All right. Now, since there is agreement on the motion for a stay, does everybody agree with Mr. Flynn that the motion for the stay also should affect the other motions pending before the Court and they, therefore, should be stayed?

MR. ROSNER: On that as well, your Honor, Mr. Tarrant and myself have spoken and I would agree not to pursue the handwriting exemplars if he will provide me with the procedure by which Henry Peterson was appointed ranking First Assistant, and I believe he has agreed.

THE COURT: How about the other motions?

MR.ROSNICK: Well, they're all -- one's a motion for discovery and inspection of Mr. Tarrant's, and another's a motion to reconsider -- Mr. Tarrant's. I think that they both would be disposed of by this agreement.

THE COURT: And how about the -- I see Mr. Flynn is now in the courtroom.

Mr. Flynn, apparently we now have an agreement on the -- and I see also other counsel are now here, so let me just review what we have been saying.

We now have an agreement on the motionfor the stay of proceeding. I then stated: Do the attorneys therefore

agree with your suggestion that if the motion for stay is granted all other motions should stay in abeyance also? And I am now just hearing from Mr. Rosnick on that. What is your position? Do you agree that all other motions should also be stayed?

MR. ROSNICK: No.

THE COURT: Except -- exept the area of the agreement on the procedures which have been worked out?

MR. ROSNICK: That would satisfy me, your Honor, yes.

THE COURT: Now, Mr. Flynn, I assume, since it was your suggestion, that you still stick with "all other motions should be stayed"?

MR. FLYNN: Oh, yes, your Honor.

THE COURT: How about you, sir?

MR. FLYNN: I'm for that.

THE COURT: What about you, sir? What is your position?

MR. BROPHY: That would be fine for me, your Honor. I always have the other aspect of the motions, anyway.

THE COURT: All right, the motion for stay shall be granted by agreement for the reasons stated in open court. That just leaves one possible opening, and that is, if Mr. Tarrant does not fulfill his part of the agreement that he will supply you with the data on procedures in filling vacancies, is that

correct?

MR. ROSNICK: Yes, your Honor.

THE COURT: Very well. All motions may go off without prejudice for the reasons stated in open court until Chavez and Giordano are decided.

MR. FLYNN: Your Honor, for the Court's -- protection of the Court, I believe the Second Circuit rule could be interpreted by some other lawyer at some other time to have some effect on my representations. For the record I respectfully ask the Court permission to waive the so-called six months rule as it has been implemented by the rules of this district.

THE COURT: I assume that necessarily follows. Is that agreeable to all counsel?

MR. BROPHY: Yes, your Honor.

MR. ROSNICK: Yes.

THE COURT: Very well.

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UNITED STATES DISTRICT COURT

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TITLE OF CASE	ATTORNEYS
THE UNITED STATES *vs.* ROGER L. SPINELLI, JOHN J. DeLUCIA, ROBERT COHEN, MICHAEL PIAZZA, DANA PIAZZA, ROGER T. WOZNICK, LOUIS VARVELLA, ALBERT PAUL MORETTI, JR., ALBERT PAUL MORETTI, SR., RALPH M. ROBAILLEY, JR., ANGELO COLANGELO, EDWARD C. STOLL, PATRICK A. CONTE, MARILYN CONTE, MICHAEL S. MAHIGEL, and PHYLLIS MAHIGEL 4-5-76	*For U.S.:* John R. Tarrant Special Attorney Department of Justice Room 1703 Post Office Building Post Office Square Boston, Massachusetts 02109 Peter C Dorsey, U. S. Atty Peter R. Casey, III Special Attorney 450 Main Street Hartford, Conn. 06103

STATISTICAL RECORD	COSTS		DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 2 mailed	Clerk					
J.S. 3 mailed	Marshal					
Violation	Docket fe					
Title						
Sec.						

~~DATE~~ 1972.	APPEARANCES ONLY ~~PROCEEDINGS~~
8/1	ROGER L. SPINELLI - Sigmund L. Miller, Esq. 855 Main Street, Bridgeport, Connecticut 06603 (334-0191)
7/24	JOHN J. DE LUCIA - ~~Thomas D. Clifford, Fedl. Public Defender~~ w/d 10/25/73 ~~Rm 271, 450 Main Street, Hartford, Conn.~~ ~~Arnold Bai, 955 Main S~~ ~~John T. Arcudi, 285 Golden Hill St., Bridgeport, Ct.~~ ~~Bridgeport, Conn.~~ w/d 11/73 (APP
3/12/75 w/d 11/21/75	ROBERT COHEN - Charles Hanken, 1115 Main Street, as of 11/12/75 ~~1330 Fairfield Avenue~~, Bridgeport, Connecticut
10/5	~~MICHAEL PIAZZA - Alan Meisel, Goldstein & Peck, 955 Main St., Bridgeport, Conn.~~ w/d 4/23/7
7/11	MICHAEL PIAZZA) w/d 4/20/76 ~~Sherin V. Reynolds~~ and Joseph M. Brophy DANA PIAZZA) ~~Goldstein & Peck, 955 Main Street, Bridgeport, Connecticut~~
~~7/12~~ w/d 7/21	ROGER T. WOZNICK - ~~James J. Gentile~~ ANGELO P. COSTA, 9/21 ~~387 Clinton Avenue, Bridgeport, Conn.~~ 2145 North Ave., Bgpt., Ct. 06604
7/24	LOUIS VARVELLA - ~~Thomas D. Clifford, Fedl. Pub. Defender,~~ ~~Robert J. Santos~~ ~~Gregory B. Craig~~ See reverse side ~~Rm. 271 - 450 Main Street, Hartford, Conn.~~
	ALBERT PAUL MORETTI, JR. - W. Paul Flynn 132 Temple Street, New Haven, Conn. (OVER)

H-299 Crim. U.S.A. v.
ROGER L. SPINELLI, ET ALS.

DATE 1972	APPEARANCES PROCEEDINGS
	~~ALBERT PAUL MORETTI, SR. - W. Paul Flynn~~ 132 Temple Street, New Haven, Conn.
4/4 -7/7	~~RALPH M. ROBALLEY, JR. - Edward G. Burstein, Burstein~~, Daniel Shepro, Goldman & Rosen 177 State Street, Bridgeport, Connecticut
9/5	ANGELO COLANGELO - Thomas M.Yuditski - 64 Lyon Terrace ~~945 Main Street~~, Bridgeport, Connecticut
7/12	EDWARD C. STOLL - Jordan R. Lustig 1016 Broad Street, Bridgeport, Ct.
	PATRICK CONTE) - ~~Joseph Polinkie~~ Daniel E.Brennan,Jr.,76 Lyon Terr.,Bridgeport,Conn MARILYN CONTE) ~~2115 Main Street, Bridgeport, Connecticut~~ (Apptd.) William Arias, 430 Barnum Avenue,Bridgeport,Ct.(Apptd.)
10/31/73	MICHAEL S. MAHIGEL) - Philip Baroff, 333 State Street, Bridgeport, Conn. (Apptd) ~~PHYLLIS MAHIGEL~~) - ~~Ralph G.Kantrowitz, 1188 Main Street, Bridgeport, Conn.~~ (APPTD)
10/4/74	Deceased 6/27/74 appld. Richard L.Albrecht, Cohen & Wolf, ~~955 Main Street~~, Bridgeport,Ct.06604 TO MIDDLE STREET
12/2/75	JOHN J. DELUCIA - Victor M. Ferrante 285 Golden Hill Street, Bridgeport, Conn. 06604
	LOUIS VARVELIA - Andrew Bowman, Federal Public Defender 770 Chapel St., New Haven, Conn.

CRIMINAL DOCKET
UNITED STATES DISTRICT COURT

D. C. Form No. 100 Rev.

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	*For U.S.:*
vs.	Stewart H. Jones, U. S. Attorney
ROGER L. SPINELLI, JOHN J. DeLUCIA, ROBERT COHEN, MICHAEL PIAZZA, DANA PIAZZA, ROGER T. WOZNICK, LOUIS VARVELLA, ALBERT PAUL MORETTI, JR. ALBERT PAUL MORETTI, SR., RALPH M. ROBALLEY, JR., ANGELO COLANGELO, EDWARD C. STOLL, PATRICK A. CONTE, MARILYN CONTE, MICHAEL S. MAHIGEL and PHYLLIS MAHIGEL	John R. Tarrant, Special Atty. 450 Main Street Hartford, Connecticut Peter R. Casey, III Spec. Atty. 450 Main Street Hartford, Conn. 06103 *For Defendant:* SEE SEPARATE SHEET

STATISTICAL RECORD	COSTS		DATE	NAME OR RECEIPT NO.	REC.	DISB
			1976 10/13	A.P.Moretti,Jr.		
J. S. 2 mailed	Clerk			FINE -Full		
				Payment	$1,000.00	
J. S. 3 mailed	Marshal		10/15	Deposit		
				GF101099		$1,000.00
Violation U. S. Code	Docket fee		10/20	Atty.Miller		
				Appeal for	$5.00	
Title 18				R.Spinelli		
			10/22	Deposit		
Sec. 1955, 2				GF100869		$5.00
			11/2	Deft.Stoll		
				FINE -Full		
				Payment	$500.00	
			11/5	Deposit		
				GF101099		$500.00

DATE 1972	PROCEEDINGS
6/27	The Grand Jury at Hartford returned a True Bill of Indictment charging violation of 18 USC 1955, 2 - 1 Count - Unlawfully, wilfully and knowingly conduct, finance, manage, supervise, direct and own a part of an illegal gambling business.
6/27	Bench Warrants for all defendant s to be issued. Indictment sealed 30 days except on further Order of Court. (Clarie, J.)
6/28	Bench Warrants issued in duplicate for all defendants, and together with certified copies of Indictment, handed Marshal for service.
7/3	Magistrate's papers re Defendants Marilyn Conte, Dana Piazza and Phyllis Mahigel, filed - Docket, Warrant with return, $1,000 bond without surety, and conditions of Release. (Moore, M.)
7/3	Magistrate's papers re Defendants Spinelli, DeLucia, Cohen, M. Piazza, Woznick, Varvella, Moretti, Jr., Moretti, Sr., Roballey, Colangelo, Stoll, P. Conte and M. Mahigel - Docket, Warrant of Arrest with return, $2,500. Appearance Bond without surety, Conditions of Release. (Moore, M.)
7/6	Appearance of Atty. Edward G. Burstein as counsel for defendant Ralph Roball filed.
7/12	Appearance of Atty. Jordan R. Lustig as counsel for defendant Edward C. Stoll, filed.

(OVER)

H 299 U.S.A. v.
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DATE 1972	PROCEEDINGS
7/	Appearance of Attys. Sherin V. Reynolds and Joseph M. Brophy as counsel for defendants Michael and Dana Piazza, filed.
7/1	Appearance of Atty. James J. Gentile as counsel for defendant Roger T. Wozniek, filed.
7/1	Motions of Defendant DANA PIAZZA for 1) Change of Venue; 2) To Dismiss Indictment; 3) Severance and A Separate Trial For The Defendant; 4) The Return of Seized Property And The Suppression Of Evidence; and 5) For Discovery And Inspection, filed.
7/1	Motions of Defendant MICHAEL PIAZZA for 1) Change of Venue; 2) To Dismiss Indictment; 3) Return of Seized Property And The Suppression Of Evidence; 4) Discovery And Inspection; and 5) Severance And A Separate Trial For The Defendant.
7/20	Motion For Withdrawal of Appearance, filed by Atty. Gentile.
7/2	Public Defender appointed for Defendants DeLucia and Varvella. Request for Public Defender by Deft. Angelo Colangelo, Denied. (Clarie, J.) CJA Form 23, Financial Affidavit, so endorsed. Endorsement entered on CJA Form D: Appointment of Counsel Pursuant To Provisions of Criminal Justice Act of 1964, as amended: "Defendant, single, admitted he was earning $250.00 per week. Appointment of Public Defender is denied." (Clarie, J.)
7/24	PLEA of not guilty entered by Defendants Michael Piazza, Dana Piazza, Roger T. Wozniek, Edward C. Stoll, John DeLucia, Robert Cohen, Louis Varvella, Angelo Colangelo, Patrick A. Conte and Marilyn Conte. CASE TRANSFERRED TO BRIDGEPORT AT REQUEST OF COUNSEL.(Clarie, J.).
7/25	File and Docket mailed to Bridgeport per Order of Court.
7/31	Endorsement on Withdrawal of Appearance: "Motion to Withdraw is Granted. (Clarie,
8/1	Appearance of Atty. Sigmund L. Miller as counsel for Defendant Roger L. Spinelli, fi
8/2	Copies of Appearance of Atty. Miller mailed to all counsel of record.
8/8	Motions for Bill of Particulars; To Inspect Grand Jury Minutes and to Extend Time Within Which to Move to Dismiss (until fourteen days after entry of the Order determining this motion); For Discovery and Inspection; For Suppression of Evidence and for Return of Seized Property; Motion for Severance; together with Notice thereof, filed by Defendant Roger L. Spinelli.
8/7	Supplemental Motion for Discovery and Inspection, filed by Defendant Michael Piazza.
8/14	Defendant Louis Varvella's Motions for Discovery And Inspection; For Relief From Prejudicial Joinder of Defendants; To Dismiss Indictment; For Bill of Particulars; To Suppress Evidence, filed.
8/14	Motions of Edward C. Stoll for 1) Bill of Particulars; 2) For Discovery And Inspection; 3) For Severance; 4) To Inspect Grand Jury Minutes and to Extend Time Within Which to Move to Dismiss; 5) For Suppression of Evidence and For Return of Seized Property; 6) To Suppress and Return Evidence; and 7) Notice of Intention To File Motions, filed.
8/22	Government's Answers to Defendant's Spinelli Motions for 1) A Bill of Particulars; 2) Discovery and Inspection; 3) To Inspect Grand Jury Minutes and To Extend Time; and 4) To Suppress Evidence; and 5) Severance, filed.
8/22	Government's Answers to Motions of defendants DeLucia and Varvella for 1) Bill of Particulars; 2) Discovery and Inspection; 3) To Suppress Evidence; 4) Relief From Prejudicial Joinder of Defendants; and 5) To Dismiss Indictment, filed.
8/22	Government's Answers to Motions of Defendants M.Piazza and D.Piazza for 1) Discovery and Inspection; 2) The Suppression of Evidence and Return of Seized Property; 3) For Severance and Separate Trial; and 4) To Dismiss Indictment, filed.
8/22	Government's Answers to Motions of Defendant Stoll for 1) Bill of Particulars; 2) Discovery and Inspection; 3) To Inspect Grand Jury Minutes and To Extend Time; 4) To Suppress Evidence; 5) The Suppression of Evidence and Return of Seized Property; and 6) Severance filed. ((CONTINUED))

DATE	PROCEEDINGS	PAGE 2
1972		
8/25	Defendant Rob_ ley's Motions for 1) Bill of Particulars; 2) Discovery And Inspection; 3) To Suppress Evidence; 4) Relief From Prejudicial Joinder of Defendants, and 5) To Dismiss Indictment, filed.	
9/5	Appearance of Atty. Thomas M.Yudi'ski as counsel for Deft.Colangelo, filed.	
9/5	Governments Answers to Defendant Roballey's Motions For 1) Bill of Particulars; 2) To Suppress Evidence; 3) For Relief From Prejudicial Joinder of Defendants; and 4) To Dismiss Indictment, filed.	
9/11	Government's Answer to Defendant Roballey's Motion For Discovery and Inspection, filed.	
9/21	Appearance of Atty. Angelo P.Costa as counsel for deft. Roger T.Woznick,filed.	
9/21	Defendant Woznick's Motions For 1) Bill of Particulars; and 2) Motion For Production, filed.	
9/22	Defendant Colangelo's Motions For 1) Discovery and Inspection; 2) To Suppress; and 3) To Dismiss Indictment; and 4) Severance and A Separate Trial for the Defendant, filed.	
9/25	PLEA- SPINELLI: Plea of not guilty entered to Count 1. Case continued on same bond. (Newman, J.)	
9/25	HEARING held on Defendants' Motions 1) For Bills of Particular; and 2)For Discovery and Inspection. - DECISION RESERVED. All other Motions deferred until 1 week after Government complies with Discovery Motions. (Newman,J.)	
9/25	Motion To Unseal R_ecords Of Intercepted Communications Pursuant To 2518(8)(a) and (b) of Title 18, United States Code, filed and Order "Motion Granted," endorsed thereon. (9/26/72) Documents unsealed and marked Court Exhibits For Identification, as follows: 1 - Letter, 12/15/71, Petersen to Tarrant re Authorization to intercept wire communications; 2- Envelope containing Logs, Report & Return; 2A- Log 1, Mills & Flynn; 2B - Lob 1, MaNamara & Steinke; 2C - Log 1, Todaro; 2D - Log, 12/18/71, Slifka; 2E - Log 12/18/71, Thiel; 2F - Log 12/18/71, Todaro; 2G - Log 12/19/71, Michaels; 2H - Log 12/19/71, Handley; 2I - Log 12/19/71, O'Neil; 2J - Log 12/20/71, Connolly; 2K - Log, 12/20/71, Flynn & Todaro; 2L - Log 12/20/71, Buffum; 2M.- Report to the Court; 2N - Return; 3 - Envelope; 3A - Order Authoriting Interception of Wire Communications; 3B - Application For Order Authorizing Interception of Wire Communications; 3C - Affidavit of Danny Steinke; 3D - Order Authroizing Use of Pen Register; 3E - Application For Authorization For Use of Pen R_egister; 4 - Application and Order re Interception of Wire Communications (Orders signed by Judge Blumenfeld); 5 - Transcript of 12/17/71; 6 - Transcript of 12/18/71; 7 - Transcript of 12/19/71; 8 - Transcript of 12/20/71; 9 - Transcript of 12/17/71; 10 - Transcript of 12/18/71; 11 - Transcript of 12/19/71; 12 - Transcript of 12/20/71; 13 - Transcript of 12/17/71; 14 - Transcript of 12/18/71; 15 - Transcript of 12/19/71; 16 - Transcript of 12/20/71. (Newman, J.) [Exhibits 1 - 4 and 13 - 16 filed in Crim. Case H-298, USA v. Balog, et als.] (M -	
10/10	Appearance of Atty. Alan Meisel as counsel for Defendant Michael Piazza, filed. Copies mailed counsel of record.	
10/10	PLEA: Plea of NOT GUILTY entered by Defts. Albert P. Moretti, Jr., and Albert P. Moretti, Sr. Motions to be filed in 2 weeks. Judge Newman disqualified other than for plea. (Newman,J.)	
10/11	Deft. Spinelli's Amendments To Motion For Discovery & Inspection; Memorandum on Defendant's Motion For Discovery and Inspection; and Brief In Support Of Defendant's Motion To Sever, filed.	
10/12	Deft. Edward C. Stoll's Motion To Dismiss Indictment, filed.	
10/16	Deft. Angelo Colangelo's 1))Motion For Bill of Particulars; 2)Supplemental Motion For Discovery And Inspection; 3) Supplemental Motion To Dismiss Indictment; and 4)Motion For Relief From Prejudicial Joinder Of Defendants, filed.	
10/18	Deft. Michael Piazza's Amendment to Motion For The Return Of Seized Property And The Suppression Of Evidence with Memorandum On Points Of Authority To Support Amendment To Motion For The Return Of Seized Property And The suppression of Evidence; and Amendment to Motion To Dismiss, filed.	

((OVER))

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DATE 1972	PROCEEDINGS
10/18	Deft. Dana Piazza's Amendment To Motion For The Return Of Seized Property And The Suppression Of Evidence with Memorandum On Points Of Authroity To Support Amendment To Motion For The Return Of Seized Property And The Suppression Of Evidence; and Amendment To Motion To Dismiss Indictment, filed.
10/25	DEFT. MICHAEL PIAZZA and DANA PIAZZA Motion For Bill of Particulars, filed.
10/24	DEFTS. ALBERT MORETTI, SR., and ALBERT MORETTI, JR. Motions for 1) Bill of Particulars; 2) To Suppress Evidence; 3) For Relief From Prejudicial Joinder Of Defendant; and 4) For Discovery and Inspection, filed.
10/24	HEARING HELD ON MOTIONS: BILL OF PARTICULARS--Defts. Moretti, Sr., and Jr.: Items 1,5,6,7, and 9 - Govt. will comply; Items 2,3,4,8 - Govt. objects--DECISION RESERVED. Ruling applies to other defts. on this motion. DISCOVERY AND INSPECTION--Defts. Moretti, Sr., and Jr.: Items 1 to 17, 19, 20, 22 to 25, 27 to 30, 32--Govt. will comply; Items 18, 31 - Govt. objects, DECISION RESERVED, Item #21 will be answered in limited way; Item #26 withdrawn. AMENDED DISCOVERY:--Deft.Spinelli: Items 14(a) to 14(g),--Govt. will comply; Item #21, Govt. will comply in part, objects in part--DECISION RESERVED; Items 14(h) to 14(l)--Govt. will comply. MOTIONS FOR INSPECTION OF GRAND JURY MINUTES; TO SUPPRESS AND RETURN EVIDENCE; FOR SEVERANCE; FOR RELIEF FROM PREJUDICIAL JOINDER; TO DISMISS; NOTICE OF INTENTION TO FILE MOTIONS; FOR SEVERANCE AND SEPARATE TRIAL---Off, without prejudice. Court requests Govt. to order transcripts of all prior hearings in this case. Govt to give complete copy of all papers filed and transcripts to lead counsel for inspection by all counsel. MOTION TO UNSEAL AND DUPLICATE TAPES OF RECORDED CONVERSATIONS INTERCEPTED PURSUANT TO 18 USC 2518, filed by Govt. Order, entered. Copy of order to be sent all counsel of record. (Zampano, J.)
10/24	Deft. Spinelli's Supplemental Motion For Discovery and Inspection, filed.
11/15 ++	Transcript of proceedings held Oct. 24,1972, filed (Reference to H-298).
11/28	Court Reporter's Notes of proceedings held on Oct.24,1972, filed at New Haven. (Russell, R.)
11/29	DEFT. VARVELLA'S Motion To Suppress #2, filed.
1973	
3/6	RULINGS ON DEFENDANTS' PRETRIAL MOTIONS, filed. (Zampano, J.) (M-3/6/1973) Motions For Discovery And Inspection: Deft.M.Piazza, D.Piazza--GRANTED, ABSENT OBJECTION. Defts. Spinelli, Moretti (Sr.,Jr.), Varvella, Roballey, Colangelo, Stoll--¶¶1-20, 22-25, 27-28, TO BE COMPLIED WITH BY GOVT., ¶¶21, 26, DENIED. Deft.Spinelli (Addl)--¶¶14A-L, GRANTED WITH LIMITATIONS expressed by Govt. counsel in open court. Defts. Spinelli, Stoll--¶¶29-32, GRANTED; ¶¶33-38, DENIED. Deft. Woznick Motion For Production GRANTED. Motions For Bills Of Particulars: Defts. Spinelli, Woznick, Stoll--¶¶1,2, GRANTED to extent agreed by Govt. in oral argument; ¶¶3-6,DENIED, ¶7, GRANTED to extent allowed in Crim.#H-298;¶8, GRANTED BY AGREEMENT; ¶8(b), DENIED as to names, addresses. Defts. M.Piazza, D.Piazza, Moretti (Sr.,Jr.), Varvella, Roballey, Colangelo --¶¶1-4, GRANTED to extent agreed by Govt. in oral argument; ¶25-9, GOVT. HAS COMPLIED. Motions To Inspect Grand Jury Minutes--DENIED. Motions For Extentions of Time--GRANTED, ABSENT OBJECTION. All other Motions - OFF WITHOUT PREJUDICE.
3/7	Copies of Rulings sent MJB, TEC, RCZ, JON, AHL, Attys. Miller, Clifford, Hanken, Meizel, Brophy, Costa, Flynn, Burstein, Yuditski, Lustig, and Belinkie.
4/3	Government's Discovery And Inspection, filed.
4/4	Appearance of Atty. Daniel Chepro as counsel for Deft. Roballey, filed, replacing Atty. Burstein now deceased.
++ 11/17/1972	- Court Reporter's Sound Recording of proceedings held July 24,1972 re Defts. M.Piazza,D.Piazza,Woznick, Stoll,DeLucia,Cohen,Varvella, Colangelo, P.Conte and M. Conte, filed at New Haven. (Sperber,R.)
4/9	Motion For Permission To Withdraw Appearance ~~,filed by Atty.Meisel re DEFTS.~~ Michael and Dana Piazza.
4/23	PLEA of DEFT.ROBALLEY - Plea of not guilty entered. Case continued on same bond for trial. (Zampano,J.) ((CONTINUED))

DATE 1973	PROCEEDINGS
4/23	HEARING held on Atty. Meisel's Motion For Permission To Withdraw Appearance - Order granting motion, absent objection, entered. (Zampano,J.) (M-4/23/73) Copies of Order sent Attys.Meisel, Miller, Clifford, Hanken, Reynolds & Brophy, Costa, Flynn, Shepro, Yuditski, Lustig, Belinkie, and Tarrant.
6/29	MOTION by defendant, Roger L. Spinelli, for Discovery and Inspection, and Motion by defendant, Roger L. Spinelli, for Leave to Take Deposition, filed, together with Notice thereof.
5/10	Court Reporters Notes of Proceedings held April 23, 1973, filed at New Haven. (Russell, R.)
7/9	Government's Response To Defendant's Motion To Take Deposition and Discovery And Inspection, filed together with Affidavits of John N. Mitchell and Henry E. Petersen.
7/9	Deft. Spinelli's Objections To Discovery And Inspection, filed.
7/11	Government's Response To Defendant's Objections To Discovery And Inspection, filed
7/23	HEARING held on DEFT. SPINELLI'S 1) Motion For Discovery And Inspection--ANSWERED BY GOVERNMENT; and 2) MOTION FOR LEAVE TO TAKE DEPOSITION - Atty. Tarrant to provide signature card, duly certified, of Henry D.Petersen's signature, and example of John N. Mitchell's initials. (ZAMPANO, J.)
7/27	Transcript of proceedings held July 23, 1973 (re Deft.Spinelli), filed. (Gale,R.)
8/6	Court Reporter's Notes of Proceedings Held on July 23, 1973, filed. (Gale,R.)
8/30	Government's Motion For Discovery And Inspection, filed.
9/4	Government's Motion To Reconsider, filed.
9/26	Motion to Withdraw as Counsel for Defendant John DeLucia, filed (by Hubert J. Santos, Federal Public Defender).
10/1	Court Reporter's Sound Recording of proceedings held on April 23,1973, filed at New Haven. (Russell,R.)
10/11	Government's Motion For Determination Of Counsel (re Defts. Michael and Phyllis Mahigel), filed, together with Notice of Motion.
10/23	HEARING held on 1) Government's Motion To Reconsider - Over to next Criminal Calendar; 2) Government's Motion For Discovery And Inspection - Over to next Criminal Calendar; 3) Public Defender Santos' Motion To Withdraw As Counsel For Deft.DeLucia--GRANTED; and 4) Government's Motion For Determination Of Counsel re Defts. Mahigel--GRANTED. Government to file motion for Stay to be heard with the continued motions.
10/25	ORDER endorsed on 1) Motion of Public Defendar Santos to Withdraw as Counsel for Deft. John DeLucia and 2) Government's Motion For Determination Of Counsel: "10/23/73. Motion granted." (Zampano,J.) (M-10/25/73) Copies of endorsements sent Attys. Tarrant, Miller, Clifford, Hanken, Reynolds, Costa, Flynn, Shepro, Yuditski, Lust and Belinkie.
10/31	CJA FORM 20 appointing Arnold Bai, Esq., as counsel for Deft. John D.DeLucia, executed by Judge Zampano filed. Copies mailed Attorney and Administrative Office.
10/31	CJA FORM 20, executed by Judge Zampano, appointing Ralph S.Kantrowitz,Esq., as counsel for deft. Phyllis A.Mahigel, filed. Copies sent Administrative Office and Atty.
10/31	CJA FORM 20, executed by Judge Zampano, appointing Philip Baroff,Esq., as counsel for Deft.Michael S.Mahigel,filed. Copies sant Atty. and Administrative Ofc.
10/31	Government's Motion For a Stay Of Proceedings, filed.
10/31	Appearance of Ralph S. Kantrowitz, Esq., as counsel for Deft.Phyllis Mahigel, filed.
11/12	HEARING held on Government's Motions 1) To Reconsider; 2) For Discovery And Inspection--OFF, without prejudice by reasons stated in open court; 3) For A Stay Of Proceedings--GRANTED, by agreement by reasons stated in open court. (Zampano,J.)
11/13	Endorsements on Motions, entered: 1) "11/12/73 Off, without prejudice, for reasons stated in open court."; 2) "11/12/73 Off, without prejudice for reasons stated in open court;"and 3)"Granted by agreement, for reasons stated in open court." (Zampano,J.) (M-11/13/73) Copies sent Attys. Tarrant, Miller, Bai, Hanken, Brophy, Costa, Clifford, Flynn, Shepro, Yuditski, Lustig, Baroff, and Katrowitz. (OVER)

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DATE	PROCEEDINGS
1973	
11/20	Court Reporter's Notes of proceedings held Oct.23,1973, filed at New Haven. (Russell,R.)
11/20	Court Reporter's Notes of proceedings held Nov.12,1973, filed at New Haven. (Russell,R.)
11/21	Brief In Support Of Motion For The Return Of Seized Property And The Suppression of Evidence, filed by Deft. M.Piazza.
11/26	Statement Regarding Appointment Of Assistants Within Office Of Assistant Attorney General For The Criminal Division, filed.
12/10	CJA FORM 20, executed by Judge Zampano, appointing John A.Arcudi,Esq., as counsel for Deft. John J.DeLucia, filed. Copies sent Administrative Office and Attorney
12/10	CJA FORM 20, executed by Judge Zampano, appointing Daniel E.Brennan,Jr., Esq.,as counsel for Deft. Patrick A.Conte, filed. Copies sent Atty. and Administrative Office.
12/10	CJA FORM 20, executed by Judge Zampano, appointing William Arias,Esq., as counsel for Deft. Marilyn Conte, filed. Copies sent Atty. and Administrative Office.
1974	
1/3	Motion To Withdraw, filed by Atty. Sherin V.Reynolds (Defts. Piazza) Copies Sent Attys. Arcudi, Brennan, Arias, Baroff and Kantrowitz.
1/2	Magistrate's papers, filed. (Parker,M) - Docket Sheet, Search Warrant, and Affidavit For Search Warrant. (Residence of M.Mahigel)
1/14	HEARING held on Atty. Reynolds' Motion To Withdraw As Counsel for Defts. Piazza. MOTION OFF--for failure to prosecute.
1/28	HEARING held on Atty. Reynolds' Motion To Withdraw As Counsel for Defts.Piazza. MOTION OFF--for failure to prosecute.
1/31	Court Reporter's Notes of proceedings held Jan.28,1974, filed at New Haven. (Russell,R.)
4/25	Dismissal Of Indictment, filed by Government and ORDER entered thereon. (Zampano,J.) (M-4/25/1974) Copies to Attys. Tarrant and Brophy. RE DEFT. DANA PIAZZA.
5/16	Defendant DeLucia's Motion To Dismiss Indictment, filed.
5/28	Notice of Readiness (for trial), filed by Atty. Tarrant.
6/3	Government's Answer To Defendant DeLucia's Motion To Dismiss Indictment,filed.
8/26	Government's Motion To Dismiss Indictment, re Deft. Albert Moretti,Sr., filed.
9/3	Endorsement entered on Government's Motion To Dismiss Indictment re Deft. Albert P.Moretti, Sr.: "9/3/74 Motion granted." (Zampano,J.) (M-9/3/74) Copies to Attys. Tarrant, Miller, Arcudi, Hanken, Brophy, Costa, Clifford, Flynn, Shepro, Yuditski Lustig, Brennen,Jr., Arias, Baroff, and Kantrowitz.
10/4	CJA FORM 20, executed by Judge Zampano, appointing Richard L.Albrecht,Esq., as counsel for Deft. Phyllis A.Mahigel, filed. Copies sent Adminstrative Office and Atty.
10/22	Appearance of Richard L.Albrecht,Esq., as counsel for Deft.P.Mahigel,filed.
11/18	Letter of Nov.13,1974, from Public Defender's Office, filed requesting that the appearance of Gregory B. Craig be entered for Deft.Varvella to replace Atty.Santos.
11/26	Informal Chambers Conference to be held Dec.9,1974, at 2:00 p.m. over to Dec.10,1974, at 2:00 p.m.
12/9	Motion of Defendant P.A.Conte To Dismiss Indictment, filed together with Memorandum On Motion To Dismiss.
12/24	Transcript of proceedings held 7/24/72 before Clarie, J., filed. (Sperber, R.)
1975	
1/2	Response of Government to Defendant's Motion to Dismiss the Indictment, filed.
1/8	Request for Hearing on Defendant's Motion to Dismiss the Indictment, filed by Deft. Patrick Conte.
1/8	Government's Motion to Compel Voice Exemplars, filed.
1/8	Memorandum of the United States in Support of Motion to Compel Voice Exemplars, filed.

DATE 1975	PROCEEDINGS PAGE 4
1/20	ORDER Vacating Stay of Proceedings, filed and entered. Order of 11/12/73, staying proceedings is hereby vacated. (Zampano, J.)M-1/20/75 Copies to RCZ,MJB, TEC, JON, Attys. Tarrant, Casey, Miller, Arcudi, Hanken, Brophy, Costa, Clifford, Flynn, Shepro, Yuditski, Lustig,Brennan, Baroff and Albrecht, and Arias
2/6	Hearing on Deft's. (P.A. Conte) Motion to Dismiss Indictment schedule for Feb. 10, 1975 over to March 10, 1975 at 10:30 a.m. Zampano, J. M-2/6/75
3/4	Supplemental Response of Government to Defendant's (Patrick A. Conte)
**	Motion to Dismiss the Indictment, filed.
3/12	Appearance of John A. Arcudi, Esq., entered for Deft. John J.DeLucia.
3/10**	HEARING held on Deft. Patrick A. Conte's Motion to Dismiss Indictment - Decision Reserved. Hearing set for March 19, 1975. Clerk to inform Atty. Belinke to appear before the Court along with Mrs. Marilyn Conte, her Atty. - Atty. Arias; Patrick A. Conte and Atty. Daniel Brennan Jr. on March 19, 1975 at 10:30 a.m. Court opened 11:20 a.m.; adjourned 11:35 a.m. (Zampano, J.) (Russell, R., Rowe, D.C.) M-3/10/75
3/10**	Court Reporter's notes of proceedings held on March 10, 1975, filed at New Haven. (re: Deft. Conte) (Russell, R.)
3/19	HEARING held on Defendants' (P. A. Conte & Marilyn Conte) Motions to Dismiss Indictment: Motions denied for reasons stated in open court. Defts'. Witness Joseph Belinkie sworn and testified; Deft. Patrick Conte sworn and testified. Court opens at 10:30 a.m. and adjourned at 11:40 a.m. ZAMPANO, J. (Russell, R.,Thorner, D. C.) M-3/19/75
3/20	Defendant Patrick A. Conte's Motion to Dismiss Indictment, endorsed: "3/19/75, For reasons stated in open court, the motion is denied." Zampano, J. M-3/21/75 Copies to Attys. Tarrant, Casey, Miller, Arcudi, Hanken, Brophy, Costa, Clifford, Craig, Flynn, Shepro, Yuditski, Lustig, Brennan, Baroff and Albrecht, and Arias.
3/19	Court Reporter's Notes of Proceedings held in New Haven before Zampano, J. on March 19, 1975, filed in New Haven. (Russell, R.)
4/24	CJA Form 20 re: William Arias, Esq., counsel for Deft. Marilyn Conte, approved by the Court and filed. (ZAMPANO, J.) Copy mailed to Administrative Office for payment.
7/10	Consolidated Motion on Behalf of the Undersigned Defendants (all defendants except Louis Varvella and Albert Paul Moretti, Jr.) to Dismiss the Indictments Because Defendants Have Been Denied Speedy Trial, filed. (Motion is consolidated with same motion in H-298)
8/4	Government's Answer to Consolidated Motion on Behalf of All Defendants to Dismiss the Indictments Because Defendants Have Been Denied Speedy Trial, filed.
10/20	HEARING held on All Pending Motions - Hearing on Defendants' Motion to Dismiss - Decision Reserved. Hearing on Government's Motion for Voice Exemplars - Decision Reserved. Defendants' Brief to be filed on or before 10/28. Government's Reply Brief on or before 11/3/75. Court opens at 10:45 a.m. Recess at 11:45 a.m. ZAMPANO, J. (Russell, R., Thorner, D.C.) M-10/20/75
10/23	Transcript of proceedings held on October 20, 1975 at New Haven, before Zampano, J., filed. (Russell, R.) (original in H-298 file.)
10/29	Brief in Support of Defendant's Motion to Dismiss and in Opposition to Government's Motion for Voice Exemplars, filed.

DATE 1975	PROCEEDINGS
10/31	Court reporter's notes of proceedings held before Zampano, J. on October 20, 1975, filed at New Haven. (Russell, R.)
11/6	Letter dated Nov. 4, 1975 from Atty. Casey to Judge Zampano requesting an additional week to respond to speedy trial issue, endorsed: "11/5/75 Approved." Zampano, J. M-11/7/75 Copies to all counsel of record.
11/17	Motion of John A. Arcudi, Esq. to Withdraw Appearance and for Appointment of New Counsel on behalf of Deft. John J. DeLucia, filed. (Victor M. Ferrante, Esq. as New Counsel)
11/21	Motion of John A.Arcudi, Esq., to Withdraw Appearance and for Appointment of New Counsel on behalf of Deft. John J. DeLucia, endorsed: "11/20/7[illegible] Granted." Zampano, J. M-11/24/75 Copies to all counsel.
12/2	CJA Form 20, executed by Zampano, J., appointing Victor M. Ferrante, Esq., as counsel for defendant, John J. DeLucia, filed. Copies mailed Atty. Ferrante and Administrative Office.
12/11	Transcript of proceedings held on July 23, 1973, before Zampano, J. in New Haven, filed. (Gale, R.)
12/12	Response of the United States to Defendants' Motion to Dismiss the Indictment and to Deny the Government's Motion to Compel Voice Exemplars, filed.
1976	
2/17	Per Misc. Cal. of RCZ: Motion to Dismiss over to 3/15/76. (Gale,R., Tuorner, D.C.)
3/15	HEARING held on Motion to Dismiss - Motion to Dismiss denied for reasons stated in open Court. Govt's Motion for voice exemplars is granted. Counsel for govt and deft. are to get together for scheduling purposes with tentative date of May 4th for jury selection. ZAMPANO,J. (Gale, R., Rowe, D.C.) Court 10:38 a.m. to 11:30 a.m. M-3/15/76
3/15	Government's Motion to Compel Voice Exemplars, endorsed: "3/15/76 For reasons stated in open court, the motion is granted." Zampano, J. M-3/16/76 Copies to all counsel in H-298 and H-299.
3/15	Consolidated Motion on Behalf of the Undersigned Defendants to Dismiss the Indictments Because Defendants Have Been Denied Speedy Trial, endorsed "3/15/76 For reasons stated in open court, the motions are denied." Zampano, J. M-3/16/76 Copies to all counsel in H-298 and H-299.
3/29	DEFT. MICHAEL PIAZZA - 1. Motion for Severance and A Separate Trial for the Defendant; 2. Motion to Dismiss Indictment and 3. Motion for the Return of Seized Property and the Suppression of Evidence, filed.
3/29	DEFT. MICHAEL PIAZZA - Memorandum on Points of Authority to Support the Motion for the Return of Seized Property and the Suppression of Evidence, filed.
4/1	DEFT. MICHAEL PIAZZA - Response of the United States to Defendant's Motion for Severance and Separate Trial, filed.

DATE 1976	PROCEEDINGS PAGE 5
4/6	Defendants' Motion for Suppression of Evidence and For Return of Seized Property, filed.
4/6	Defendants' Brief on Motion to Suppress, filed.
4/7	DEFT. EDWARD C. STOLL - Motion to Suppress, filed.
4/8	DEFT. PHYLLIS MAHIGEL - Order for Dismissal of Indictment, filed with Leave of court granting dismissal, entered thereon. ZAMPANO, J. M-4/9/76 Copies to Attys. Tarrant, Casey and Albrecht.
4/19	DEFT. MICHAEL PIAZZA - Motion of George J. Markley, Esq.,* to Withdraw Appearance on behalf of deft., filed. *(of Goldstein & Peck)
4/20	DEFT. MICHAEL PIAZZA - Motion of George J. Markley, Esq. of Goldstein & Peck to Withdraw appearance on behalf of deft., endorsed: "4/20/76 Granted." ZAMPANO, J. M-4/21/76 Copies to all counsel.
4/26	Court Reporter's Notes of proceedings held on March 15, 1976 at New Haven before Zampano, J., filed in New Haven. (Gale, R.)
4/30	CJA Form 20 (Atty. Richard L. Albrecht, counsel for Deft. Phyllis A. Mahigel) approved by the Court, and filed. (Zampano, J.) Copy mailed Administrative Office for payment.
5/3	Response of the United States to Defendants' Motion to Suppress Intercepted Wire Communications, filed.
5/11	Defendants' Reply Brief on Motion to Suppress, filed.
6/1	HEARING held on 1. Motion to Suppress Wiretap Interceptions - Motions denied, for reasons stated in open court. 2. Defendant's (Michael Piazza) Motion for Severance and Separate Trial - Motion denied without prejudice for reasons stated in open court. Defendants oral Motion to Take the Deposition of John Mitchell - denied. ZAMPANO, J. Court opens at 11:00 a.m. Adjourned at 11:50 a.m. (Gale, R., Thorner, D.C.) M-6/1/76
6/2	Defendants' Motion for Suppression of Evidence and for Return of Seized Property, endorsed: "6/1/76 For reasons stated in open court, this motion is denied." ZAMPANO, J. M-6/4/76 Copies to all counsel of record.
6/2	DEFT. MICHAEL PIAZZA Motion for Severance and A Separate Trial for the Defendant, endorsed: "6/1/76 Denied, without prejudice." ZAMPANO,J. M-6/4/76 Copies to counsel of record.
6/4	Court Reporter's Notes of proceedings held on June 1, 1976 at New Haven before Zampano, J., filed at New Haven. (Gale, R.)
6/8	Response of the United States to Defendants' Motion to Suppress Physical Evidence, filed.
6/14	Motion of the United States for a Court Order Directing that the

(continued on Page 5a)

DATE 1976	PROCEEDINGS PAGE 5a
6/14	(cont.) Defendants Identify Themselves by Name When Submitting to Previously Ordered Voice Exemplars, filed.
6/21	DEFT. ROGER L. SPINELLI - Motion to Suppress, filed.
6/28	Response of the United States to the Defendant Spinelli's Motion to Suppress Physical Evidence, filed.
7/6	HEARING held on: Motion of U. S. Re. Voice Exemplars & Defendant's Motion for Supplemental Discovery - Over to 7/19. ZAMPANO, J. (Gale, R. & Thorner, D. C.)
7/15	DEFT. LOUIS VARVELLA - Memorandum in Support of Motion to Suppress #2, filed.
7/19	HEARING held on Motion to Suppress - denied. Defendant's Motion for Supplementary Discovery - granted. Motion (U.S.) Re. Voice Exemplars-Govt. motion for voice exemplars is granted. Court orders that defts. Balog, Lanese (2), Piazza and Messina re to state their names prior to reading what the gov t submits when giving the exemplars. Ruling also applies to Mr. Cohen. 11:42 a.m. to 11:48 a.m. Recess. Motion to Suppress statements of R. Lanese. Court will reserve decision and hold hearing at trial. Govt. is to respond re: articles taken from Varvella person in 24 hrs. If a response is given, deft. is allowed 7 days to make appropriate motions. Motion to Withdraw as to Nicholas Messina, William Balog and Richard Lanese, filed by Atty. Meehan. Deft. Messina advises he has retained Lawrence Merly of Bpt. Deft. Balog has one week to return with appt'd. counsel to this Court, if he does not have counse Court will appt. counsel for him. Deft. R. Lanese to file financial affidavit, after which Court will appt. counsel. Court advises counsel that Sept. 14, 1976 is a firm date for case to be ready for trial, no continuances will be granted. Address for Joseph Brophy is P.O. Box 5, Westport, Conn. has not been receiving all pleadings or calendars in this matter. Court opens at 11:24 a.m. Adjourned at 12:52 p.m. ZAMPANO, J. M-7/19/76 (Rowe, D.C., Gale, R.)
7/19	Court Reporter's Notes of proceedings held on July 19, 1976, filed in New Haven. (Gale, R.)
7/20	Motion of the United States for a Court Order Directing That The Defendants Identify Themselves by Name When Submitting to Previously Ordered Voice Exemplars, endorsed: "7/19/76 Motion is granted." ZAMPANO, J. M-7/21/76 Copies to all counsel.*for reasons stated in open Court."
7/20	DEFT. SPINELLI Motion to Suppress, endorsed: "7/19/76 For reasons stated in open court, the motion is denied." ZAMPANO, J. M-7/21/76 Copies to counsel.
7/20	DEFT. EDWARD STOLL Motion to Suppress, endorsed: "7/19/76 For reasons stated in open court, the motion is denied." ZAMPANO, J. M-7/21/76 Copies to counsel.
7/20	DEFT. MICHAEL PIAZZA Motion for the Return of Seized Property and the Suppression of Evidence, endorsed: "7/19/76 For reasons stated in open court, the motion is denied." ZAMPANO,J. M-7/21/76 Copies to counse

(Continued on Page 6)

DATE 1976	PROCEEDINGS PAGE 6
9/9	DEFT. ROGER T. WOZNICK - Motion for Severance, filed.
9/13	CHANGES OF PLEAS: DEFT. ROGER SPINELLI - Plea of not guilty entered on Sept. 25, 1972 erased from record and plea of nolo contendere to Count 1 entered. Court enters a finding of guilty to Count 1. Case continued on same bond for sentencing. ZAMPANO, J. (Gale, R., Consiglio, D.C.) M-9/14/76 12:50 PM
9/13	DEFT. JOHN DE LUCIA - Plea of not guilty entered on July 24, 1972 erased from record and plea of nolo contendere to Count 1 entered. Court enters a finding of guilty to Count 1. Case continued on same bond for sentencing. ZAMPANO, J. (Gale, R., Consiglio, D.C.) M-9/14/76 12:50 PM
9/13	DEFT. ROBERT COHEN - Plea of not guilty entered on July 24, 1972 erased from record and plea of guilty to Count 1 entered. Court accepts plea. Case continued on same bond for sentencing. ZAMPANO, J. (Gale, R. Consiglio, D. C.) M-9/14/76 1:30 P. M.
9/13	DEFT. LOUIS VARVELLA - Plea of not guilty entered on July 24, 1972 erased from record and plea of nolo contendere to Count 1 entered. Court enters a finding of guilty to Count 1. Case continued on same bond for sentencing. ZAMPANO, J. (Gale, R., Consiglio, D.C.) M-9/14/76 12:50 PM
9/13	DEFT. ALBERT PAUL MORETTI, JR. - Order of Dismissal of Indictment, filed and entered. Substituted Information, filed. Deft. pleads guilty to Count 1. Case continued on same bond for sentencing. ZAMPANO, J. (Gale, R., Consiglio, D. C.) M-9/14/76 1:50 P. M.
9/13	DEFT. RALPH M. ROBALLEY, JR. - Order of Dismissal of Indictment, file and entered. Substituted Information, filed. Deft. pleads guilty to Count 1. Case continued on same bond for sentencing. ZAMPANO, J. (Gale, R., Consiglio, D. C.) M-9/14/76 1:50 P. M.
9/13	DEFT. EDWARD C. STOLL - Plea of not guilty entered on July 24, 1972 erased from record and plea of guilty to Count 1 entered. Court accepts plea. Case continued on same bond for sentencing. ZAMPANO, J. (Gale,R., Consiglio, D. C.) 1:30 P. M. M-9/14/76
9/13	DEFT. PATRICK A. CONTE - Plea of not guilty entered on July 24, 1972 erased from record and plea of guilty to Count 1 entered. Court accepts plea. Case continued on same bond for sentencing. ZAMPANO, J. (Gale, R. Consiglio, D. C.) 1:30 P. M. M-9/14/76
9/13	DEFT. MARILYN CONTE - Plea of not guilty entered on July 24, 1972 erased from record and plea of guilty to Count 1 entered. Court accepts plea. Case continued on same bond for sentencing. ZAMPANO, J. (Gale, R. Consiglio, D.C.) 1:30 P. M. M-9/14/76
9/14	JURY TRIAL ASSIGNMENT LIST: Court opens at 10:15 a.m. 11:10 to 11:30 a.m. Recess. 11:30 - 1:00 p.m. Jury selection. 1:00 - 2:00 Recess 2:15 p.m. - 4:15 p.m. Jury selection. Continuance as to severed defts. Piazza and Mahigel in H-299 is granted. Atty. Casey is to notify Court when it will be ready or how plea negotiations are going. ZAMPANO, J. (Gale, R., Rowe, D. C.) M-9/15/76

DATE 1976	PROCEEDINGS Page 6a.
9/13	Court Reporter's Notes of proceedings held on Sept. 13, 1976 in New Haven, before Zampano, J., filed in New Haven. (Gale, R.)
9/17	Marshal's Return showing service, filed. (Subpoena to Produce Document or Object - Mr. A.J. McBean)
9/28	Supplemental CJA Form 20 in amount of $145.00 submitted by Attorney Arias as counsel for Defendant Marilyn Conte, approved by Court and filed Zampano, J. Copy mailed Administrative Office for Payment.
10/1	Court Reporter's sound recording of proceedings held on Sept. 13, 1976, filed in New Haven.
10/6	DEFT. ROGER T. WOZNICK: Order for Dismissal of Indictment, filed with Leave of Court granting dismissal, entered, thereon. ZAMPANO, J. M-10/7/76 Copies to Attys. Casey and Costa.
10/12	DISPOSITIONS:
10/12	DEFT. ROGER SPINELLI - Imprisonment for 1 year. Sentence of imprisonment suspended after 3 months. Deft. placed on probation for 2 years. $2,000.00 Fine, payable within one year. Execution of sentence stayed for 10 days. If there is an appeal, the execution of sentence shall be stayed until the conclusion of appellate procedures. If no appeal is taken, deft. shall present himself to U. S. Marshal in 10 days. 11:15 a.m. ZAMPANO, J. M-10/12/76 (Gale, R., Rowe,DC)
10/12	DEFT. JOHN J. DELUCIA - Over. ZAMPANO, J. M-10/12/76 (Gale, R., Rowe, D.C.)
10/12	DEFT. ROBERT COHEN - Over to 10/18/76. ZAMPANO, J. M-10/12/76 (Gale, R., Rowe, D.C.)
10/12	DEFT. LOUIS VARVELLA - Imprisonment for 1 year. Sentence of imprisonment suspended forthwith. Deft. placed on probation for 2 years. Deft. required to pay fine of $1,000.00 within one year. If appeal is taken probation shall commence at conclusion of all appellate procedures. ZAMPANO, J. M-10/12/76 (Gale, R., Rowe, D.C.) 11:15 a.m.
10/12	DEFT. ALBERT P. MORETTI, JR. - Deft. required to pay fine of $1,000. within 30 days. ZAMPANO, J. M-10/12/76 (Gale,R., Rowe, D.C.) 11:15 a.m.
10/12	DEFT. RALPH M. ROBALLEY - Deft. required to pay fine of $1,000.00 within one year. ZAMPANO, J. M-10/12/76 (Gale, R.,Rowe,D.C.) 11:15 a.m.
10/12	DEFT. EDWARD C. STOLL - Imprisonment for 1 year. Sentence of imprisonment suspended forthwith. Deft. placed on probation for 1 year. $500.00 Fine payable within 3 months. If appeal is taken probation shall commence at conclusion of all appellate procedures. ZAMPANO, J. M-10/12/7 (Gale, R., Rowe, D.C.) 11:15 a.m.
10/12	DEFT. PATRICK CONTE, SR. - Imprisonment for one year. Sentence of imprisonment suspended forthwith. Deft. placed on probation for 2 years. $1,000.00 Fine, payable at $100.00 per month for ten months. If appeal is taken probation shall commence at conclusion of all appellate procedures. ZAMPANO, J. M-10/12/76 (Gale,R., Rowe, D.C.) 11:15 a.m.

CONTINUED ON PAGE 7

DATE 1976	PROCEEDINGS PAGE 7
10/12	DISPOSITIONS (cont.):
10/12	DEFT. MARILYN CONTE - Imprisonment for 1 year. Sentence of imprisonment suspended forthwith. Deft. placed on probation for 2 years. If appeal is taken, probation shall commence at conclusion of all appellate procedures. ZAMPANO, J. M-10/12/76 (Gale,R., Rowe, D.C.) 11:15 a.m.
10/12	DEFT. MICHAEL PIAZZA - Order for Dismissal of Indictment, filed by U. S. Atty., with Leave of Court granting dismissal, entered thereon. ZAMPANO, J. 10/22/76 Copies to Attys. Tarrant, Casey and Brophy.
10/12	DEFT. ANGELO COLANGELO - Order for Dismissal of Indictment, filed by U. S. Atty., with Leave of Court granting dismissal, entered thereon. ZAMPANO, J. M-10/22/76 Copies to Attys. Tarrant, Casey and Yuditski.
10/13	DEFT. ROGER L. SPINELLI - Judgment and Commitment, entered. ZAMPANO, J. M-10/22/76 Copies to Attys. Casey and Miller. Two certified copies handed U. S. Marshal and two cert. copies handed Probation officer, Bpt.
10/13	DEFT. LOUIS VARVELLA - Judgment and Order of Probation, entered. ZAMPANO, J. M-10/22/76 Copies to Attys. Casey and Bowman, two cert. copies handed Probation Officer, Bpt.
10/13	DEFT. ALBERT P. MORETTI, JR. - Judgment, entered. ZAMPANO, J. M-10/22/76 Copies to Attys. Casey and Flynn.
10/13	DEFT. RALPH M. ROBALLEY, JR. - Judgment, entered. ZAMPANO, J. M-10/22/76 Copies to Attys. Casey and Shepro.
10/13	DEFT. PATRICK A. CONTE - Judgment and Order of Probation, entered. ZAMPANO, J. M-10/22/76 Copies to Attys. Casey and Brennan. Two cert. copies handed Probation Officer, Bpt.
10/13	DEFT. MARILYN CONTE - Judgment and Order of Probation, entered. ZAMPANO, J. M-10/22/76 Copies to Attys. Casey and Arias. Two cert. copies handed Probation Officer, Bpt.
10/14	DEFT. EDWARD C. STOLL - Judgment and Order of Probation, entered. ZAMPANO, J. M-10/22/76 Copies to Attys. Casey and Lustig. Two cert. copies handed Probation Officer, Bpt.
10/18	DISPOSITION: DEFT. JOHN J. DELUCIA - Imprisonment for 1 year; sentence of imprisonment suspended after 3 months; 2 years Probation. Deft. required to pay fine of $1,000.00 within one year. Sentence stayed for 10 days, if an appeal is taken, Bond of own recognizance. If no appeal is taken, defendant shall surrender to the U. S. Marshal. ZAMPANO, J. M-10/18/76 (Russell, R., Thorner, D.C.) 10:50 to 10:58 a.m.
10/18	DISPOSITION: DEFT. ROBERT COHEN - Imprisonment for 1 year; sentence of imprisonment suspended forthwith; 1 year Probation. Deft. required to pay fine of $500.00 within 3 months. ZAMPANO, J. M-10/18/76 (Russell, R., Thorner, D.C.) 10:45 to 10:50 a.m.
10/20	DEFT. JOHN J. DE LUCIA - Judgment and Commitment, entered. ZAMPANO, J. M-10/22/76 Copies to Attys. Casey and Ferrante, two cert. copies handed Probation Officer, Bpt.

D. C. 109 Criminal Continuation Sheet

CONTINUED ON PAGE 7a.

DATE 1976	PROCEEDINGS
10/20	DEFT. ROBERT COHEN - Judgment and Order of Probation, entered. ZAMPANO, J. M-10/22/76 Copies to Attys. Casey and Hanken, two cert. copies handed to Probation Officer, Bpt.
10/20	Notice of Appeal from judgment of conviction and sentence, filed by DEFT.SPINELLI. Copies to Attys. Casey and Miller, also defendant. Copy of Form B and instructions handed to Atty. Rosnick for Atty. Miller.
10/22	Notice to Probation Office on Filing Notice of Appeal handed Probation Officer, Bpt., along with certified copy of Notice of Appeal.
10/27	Form A, filed re: Deft. Spinelli, also Form B.
10/27	CJA Form 20 (Atty. William Arias, counsel for Deft. Marilyn Conte) approved by Court and filed. Zampano, J. Copy mailed Administrative Office for payment.
10/28	DEFT. JOHN J. DE LUCIA - Notice of Appeal, filed. (Form B) Copies to Atty. Diorio and Atty. Casey.
10/28	Notice to Probation Office on Filing Notice of Appeal handed Probation Officer, Bpt., along with certified copy of Notice of Appeal.
11/3	Form A, filed re: Deft. DeLucia.
11/3	Certified copies of Notices of Appeal and Docket Entries, along with Forms A and B for Deft. Spinelli and Form A for Deft. DeLucia forwarded Clerk, U. S. Court of Appeals.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	
v.	:	CRIMINAL NO. H 293
ROGER L. SPINELLI, JOHN J. DeLUCIA, ROBERT COHEN, MICHAEL PIAZZA, DANA PIAZZA, ROGER T. WOZNICK, LOUIS VARVELLA, ALBERT PAUL MORETTI, JR., ALBERT PAUL MORETTI, SR., RALPH M. ROBALLEY, JR., ANGELO COLANGELO, EDWARD C. STOLL, PATRICK A. CONTE, MARILYN CONTE, MICHAEL S. MAHIGEL and PHYLLIS MAHIGEL	:	FILED JUN 27 3 12 PM '72 U.S. DISTRICT COURT DIST. OF CONN.

INDICTMENT

THE GRAND JURY CHARGES:

That from on or about the seventeenth day of December, 1971, and continuing thereafter up to and including the first day of January, 1972, in the State and District of Connecticut, Roger L. Spinelli, John J. DeLucia, Robert Cohen, Michael Piazza, Dana Piazza, Roger T. Woznick, Louis Varvella, Albert Paul Moretti, Jr., Albert Paul Moretti, Sr., Ralph M. Roballey, Jr., Angelo Colangelo, Edward C. Stoll, Patrick A. Conte, Marilyn Conte, Michael S. Mahigel and Phyllis Mahigel, the defendants herein, did unlawfully, wilfully and knowingly conduct, finance, manage, supervise, direct and own a part of an illegal gambling business, to wit, bookmaking, said illegal gambling business (A) being in violation of the laws of the State of Connecticut, to wit, Public Act 865 (1971) Sections 23 and 24, (B) involving more than five (5) persons who conduct, finance, manage, supervise, direct and own a part of said business and (C) having a gross revenue of two thousand dollars ($2,000) in any single day.

In violation of Sections 1955 and 2 of Title 18, United States Code.

A TRUE BILL

FOREMAN

STEWART H. JONES
United States Attorney

JOHN R. TARRANT
Special Attorney

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	
v.	:	CRIMINAL NO. H 299
ROGER L. SPINELLI	:	

MOTION OF DEFENDANT ROGER L. SPINELLI
FOR SUPPRESSION OF EVIDENCE AND
FOR RETURN OF SEIZED PROPERTY

The Defendant Roger L. Spinelli moves pursuant to the United States Constitution, pursuant to Rule 41 of the Federal Rules of Criminal Procedure and pursuant to 18 United States Code Section 2518 (10) to suppress the contents of any and all intercepted wire and oral communications or evidence derived therefrom and to return any property seized from the defendant on the grounds that

(a) the communication or communications was unlawfully intercepted;

(b) the order of authorization or approval under which it was intercepted was insufficient on its face;

(c) the interception was not made in conformity with the order of authorization or approval;

(d) The statute authorizing said interception is unlawful and unconstitutional on its face and as applied to the defendant Roger L. Spinelli;

(e) there was no probable cause for the issuance of the wire tap authorization;

(f) Section 1955 of Title 18, which formed the basis of the investigation, is unlawful and unconstitutional on its face and as applied to the defendant Roger L. Spinelli; and

(g) The authorization was secured on the basis of fraudulent and misleading statements by the government which the defendant is alleged to have violated and is unconstitutional on its face and as applied to the defendant Roger L. Spinelli.

Dated this 31st day of July, 1972.

RESPECTFULLY SUBMITTED,

SIGMUND L. MILLER, P.C.

SIGMUND L. MILLER, P.C.
ATTORNEY FOR THE DEFENDANT,
ROGER L. SPINELLI

CERTIFICATION

I hereby certify that a copy of the foregoing has been sent this date to Stewart H. Jones, United States Attorney, Federal Courthouse, Lafayette Blvd., Bridgeport, and to John R. Tarrant, Special Attorney, U. S. Department of Justice, 1703 U. S. Post Office and Courthouse, Boston, Massachusetts 02109, and to all counsel of record.

SIGMUND L. MILLER

SIGMUND L. MILLER

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	)	
	)	
v.	)	CRIMINAL NO. H-299
ROGER L. SPINELLI	)	

GOVERNMENT'S ANSWER TO DEFENDANT'S MOTION FOR DISCOVERY AND INSPECTION

The defendant Roger L. Spinelli, pursuant to Rule 16, Federal Rules of Criminal Procedure and Section 2518 of Title 18, United States Code, has moved for extensive discovery and inspection.

1,2,3. In demands one, two and three the defendant seeks any and all confessions, admissions and/or statements made by him. In conformity with Rule 16a, F.R.C.P. the Government will produce all relevant statements made by the defendant which are within the possession custody or control of the Government.

4. In demand four the defendant seeks any and all confessions, admissions and/or statements made by any co-defendant. This demand is considered to go beyond the scope of Rule 16 which recites "any relevant (1) written or recorded statements or confessions made by the defendant....." (emphasis added). See United States v. Fassler 46 F.R.D. 43 (D.C.N.Y. 1968).

In demands five through twenty three the defendant seeks to elicit information concerning electronic surviellance.

5. In demand five the defendant seeks to know whether any application for Orders authorizing or approving the interception of wire or oral communications were made in connection with the investigation which led to the return of the instant indictment. On December 16, 1971 an application was made to the United States District Court for the District of Connecticut for an Order authorizing and approving the interception of wire communications in connection with the investigation of the defendant Roger L. Spinelli.

6a. In response to demand six(a) the defendant is advised that the Order applied for was issued.

Section 2518(9) of Title 18, United States Code, in part, states:

"The contents of any intercepted wire or oral communication or evidence derived therefrom shall not be received in evidence or otherwise disclosed in any trial, hearing or other proceeding in a Federal or State court unless such party, not less than ten days before the trial, hearing, or proceeding, has been furnished with a copy of the court order, and accompanying application under which the

interception was authorized or approved."

6b. In conformity with Section 2518(9) of Title 18, United States Code, and in response to demand six(b) a copy of the application and order will be made available to the defendant.

6c-13. In demands six(c) through thirteen the defendant seeks information which is set forth in aforementioned application. Production of the application and order should satisfy these demands - the order and application speak for themselves.

14. In conformity with Section 2518(9) of Title 18, United States Code and in response to demand fourteen, a copy of the Order will be made available to the defendant.

15. In demand fifteen the defendant asks the length of time wire communications were intercepted. The interception of wire communications continued for a period of four (4) days.

16. In response to demand sixteen the defendant is advised that the last date on which the order authorizing interception was in effect was December 30, 1971.

17. In demand seventeen the defendant seeks to know who has custody of the recordings. The original tape recordings were turned over to John R. Tarrant, Special Attorney, United States Department of Justice who caused the original tape recordings to be placed in the safe at the Office of the Federal Bureau of Investigation at New Haven, Connecticut.

18. In demand eighteen the defendant requests a list of all telephone numbers from which or to which communications were intercepted and which relate to the present indictment. This broad demand since it goes far beyond information relating to the defendant Spinelli is viewed as an indirect method of attempting to identify potential Government witnesses and is beyond the scope of Rule 16, F.R.C.P.

19. In demand nineteen the defendant asks the dates on which wire communications of the defendant, co-defendants and unindicted co-conspirators were intercepted and the times during each day when the intercepting devices were working. The defendant is advised that conversations were intercepted on December 17th, 18th, 19th and 20th, 1971 between the hours from approximately twelve o'clock noon until approximately 3:00 p.m.

20. In demand twenty the defendant seeks the means by which the communications were intercepted. The defendant is advised that communications were intercepted by means of a tape recorder.

The defendant further seeks the manufacturers name, the year the device was made and whether or not it was sold with operating instructions. He also demands the identity of all persons who participated in the installation or operation of the recording equipment. The Government views this portion of the demand as beyond the scope of Rule 16 discovery.

21. In demand twenty one the defendant seeks the names and addresses of all persons intercepted but not indicted. This demand is viewed as an attempt to discover the identity of Government which is not properly discoverable. Rule 16, F.R.C.P.

22. In demand twenty two the defendant seeks to know whether any request was made to postpone service of the required inventory under Section 2518(8) of Title 18, United States Code. The defendant is advised that no request was made.

23. In demand twenty three the defendant seeks production of the tape recordings, transcriptions and summaries of intercepted conversations. The Government agrees to make available to the defendant the tape recorded conversations and the summaries or monitors notes.

24. In demand twenty four the defendant seeks production of any nonelectronic surviellance. This is viewed as a demand for evidentiary material such as visual observations which is beyond the scope of Rule 16.

25. In demand twenty five the defendant requests the means of identification of the participants in the intercepted conversations. This demand calls for evidentiary proof which is not proper under Rule 16.

26. In demand twenty six the defendant requests copies of all minutes of the Grand Juries which investigated this case. No defendant testified before the Grand Jury, therefore, Rule 16(a) regarding production of recorded testimony of the defendant before a grand jury is not applicable. The production of the grand jury testimony of a witness is now controlled by Section 3500 of Title 18, United States Code. The Organized Crime Control Act of 1970, enacted October 15, 1970, makes the procedure for production of grand jury minutes the same as for obtaining documents under the Jencks Act, - after the witness has testified on direct examination.

27. In demand twenty seven the defendant requests all books, papers, documents or tangible objects. The Government will comply with Rule 16b, Federal Rules of Criminal Procedure. The defendant includes in his Rule 16b request a demand for the tapes of recorded conversation. These will be made available for listening.

28. In demand twenty eight the defendant demands all exculpatory material. The Government views this demand as calling for all material falling within the rule of Brady v. Maryland 373 U.S. 83 to which the Government will comply.

29. In demand twenty nine the defendant seeks the identity of the persons who participated in the designation of the Assistant Attorney General who authorized the interception. The Government will produce the order and underlying application which will speak for itself.

30. In demand thirty the defendant seeks the identity of the persons who authorized the interception. Again the Government takes the position that the order and underlying application speak for themselves.

31. In demand thirty one the defendant seeks the identity of all other persons who participated in the decision to seek authorization to intercept communications. The Government views this demand as calling for information which is outside the scope of Rule 16.

32. In demand thirty two the defendant asks to be provided with a copy of the Manual for Conduct of Electronic Surviellance. The Government views this demand as calling for information which is outside the scope of Rule 16.

33. In demand thirty three the defendant seeks the business and resident address of Will Wilson. This demand is viewed as having no purpose whatsoever and is outside the scope of Rule 16.

34. In demand thirty four the defendant seeks the identity of all persons referred to in the indictment as being unknown to the Grand Jury. The indictment Criminal Number H-299 does not charge persons unknown.

35-38. In demands thirty five through thirty eight the defendant seeks to know the capacity in which each defendant participated in the unlawful activity and the places where each participated. These demands call for evidentiary material not properly matter for discovery. Rule 16, F.R.C.P. See United States v. Politi 334 F.S. 1318 (1971).

Therefore, the Government respectfully requests that as to those items to which the Government objects and which fall outside the scope of Rule 16 F.R.C.P. the defendant's motion for discovery and inspection be denied.

Respectfully submitted

STEWART H. JONES
UNITED STATES ATTORNEY

BY: JOEL R. TAUBERT
SPECIAL ATTORNEY

CERTIFICATE

This is to certify that a copy of the foregoing was mailed, postage prepaid, to the attorneys of record in the case of United States of America versus Roger L. Spinelli et al Criminal Number H-299 on August 21, 1972.

John R. Barnett

JOHN R. BARNETT
SPECIAL ATTORNEY

August 21, 1972
Dated

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	)	
	)	
v.	)	CRIMINAL NO. H-299
	)	
ROGER L. SPINELLI, ET AL	)	

DISCOVERY AND INSPECTION

Now comes the United States of America, by and through its attorney, John R. Tarrant, Special Attorney, United States Department of Justice, and makes the following voluntary disclosure in response to the defendants' motion for discovery and inspection.

A. Motion of the Defendant Roger L. Spinelli

1, 2, 3, 4. With regard to confessions, admissions or statements made by the defendants charged in Criminal Indictment No. H-299 to government or law enforcement officers, exclusive of intercepted communications, the following reports, copies of which are attached, are known to the attorney for the government; Roger L. Spinelli, dated January 5, 1972 and January 21, 1972; Michael Piazza, dated January 25, 1972; Louis Varvella, dated January 20, 1972; Ralph M. Roballey, Jr., dated January 25, 1972 and July 5, 1972; Edward C. Stoll, dated January 6, 1972; and Angelo Colangelo, dated January 17, 1972.

5. An application for an order authorizing and approving the interception of wire communications was submitted to the United States District Court for the District of Connecticut on December 16, 1971 in connection with the investigation of the unlawful activities of the defendants Roger L. Spinelli and John J. DeLucia, charged here in Criminal Indictment No. H-299.

6a. An order was issued on December 16, 1971.

b. A copy of the application is hereto attached.

c. The making of the application was authorized by John N. Mitchell and Henry E. Petersen. Attached are copies of affidavits of John N. Mitchell and Henry E. Petersen outlining the authorization process.

7. Wire communications were intercepted to and from telephone Nos. 333-1224 and 336-5976, located at Apartment C-3, 215 Barnum Avenue,

Bridgeport, Connecticut.

Multiple appearance for telephone No. 336-5976 was located on binding post 25 within the telephone pole box on telephone pole 933 opposite 520 Noble Avenue, Bridgeport, Connecticut.

Multiple appearance for telephone No. 333-1224 was located on binding post 17 within the telephone pole box on telephone pole 933 opposite 520 Noble Avenue, Bridgeport, Connecticut.

Leased line circuits originating within the telephone pole box on telephone pole 933 and terminating within the office of the Federal Bureau of Investigation, Federal Building, 915 Lafayette Boulevard, Bridgeport, Connecticut, were located on binding posts 14 and 19.

A jumper wire was attached to binding post 14 and cross-connected to binding post 17 within the telephone pole box located on pole 933.

A jumper wire was attached to binding post 19 and cross-connected to binding post 25 within the telephone pole box located on pole 933.

Recording equipment was placed on the two leased lines originating within the telephone pole box on telephone pole 933 opposite 520 Noble Avenue, Bridgeport, Connecticut, and terminating within the office of the Federal Bureau of Investigation, Federal Building, 915 Lafayette Boulevard, Bridgeport, Connecticut.

8. The identified persons believed to have been committing the offenses which formed the basis for the application for interception were Roger L. Spinelli, John J. DeLucia, Nicholas V. Lanese, William R. Balog and Peter D. Chapdelaine.

9. At the time of the application the offenses the government believed the persons, whose communications were to be intercepted, were committing included Sections 1955 and 371 of Title 18, United States Code.

10. For a period of six months prior to the filing of an application for an order to intercept wire communications at Apartment C-3, 215 Barnum Avenue, Bridgeport, Connecticut, normal investigative procedures, consistent with the type of violations being committed and calculated not to disclose to the potential defendants the existence of the investigation, were employed but failed to develop evidence sufficient to support prosecution. The procedures utilized are reflected in the affidavit of Special Agent Danny F. Steinke, which is hereto attached.

The sources of confidential information, while agreeable to providing information on a discreet basis, refused to testify in any proceeding where their identify would become known.

Standard visual surveillance proved only partially successful. While it was possible to observe the suspects entering or leaving their suspected book locations it was not possible to observe them actually operating the illegal gambling business.

Examination of telephone toll records of the suspects did not indicate the nature and content of the calls and did not reflect local calls of a criminal nature.

Interviews with individuals known to have utilized the illegal services provided by the suspects, but who were not cooperative with investigative officers, were considered too risky to attempt. In all likelihood anyone interviewed would immediately alert the suspects that they were under investigation.

Experience with the use of immunity grants to compel testimony has taught that individuals involved in illegal organized gambling and knowledgeable enough to provide evidence sufficient for conviction will suffer incarceration for contempt rather than testify and fear for their safety. Furthermore, an attempt to secure testimony under a grant of immunity, if unsuccessful, would undoubtedly result in the disclosure of the pending investigation and thereby destroy it.

The use of search warrants, assuming the suspects did not destroy the evidence before the executing officers seized it, very likely would not result in the obtaining of physical evidence sufficient to reflect the complete nature and scope of the gambling operation.

The judgment made in this case that normal investigative procedures reasonably appear unlikely to succeed, was not based upon what investigative techniques were theoretically possible, but, considering all the facts and circumstances, what techniques, viewed in a practical and common sense fashion, would likely bring the investigation to fruition.

Except as set forth hereinafter in response to demand F-23b, no wire or oral communication of the defendants charged in Criminal No. H-299 was intercepted without a prior order.

11. The interception of wire communications was sought to be maintained on a daily basis between the hours of 12:00 noon and 8:00 P. M., until the manner in which the suspects participated in conducting their illegal gambling business, the identities of their confederates, their duties and responsibilities, their places of operation and the nature and scope of the illegal gambling business was revealed or for a fifteen-day period.

12. The application for the interception of wire communications which formed the basis for Criminal Indictment No. H-299 was made on December 16, 1971. As of that date there had been no application made for authorization to intercept wire or oral communications of any of the defendants. More precisely, prior to December 16, 1971, no defendant in Criminal Indictment No. H-299 was named in an application or order to intercept wire or oral communications.

13. There were no written or oral applications for extensions of judicial orders.

14. The order authorizing and approving the interception of wire communications of the defendants in Criminal Indictment No. H-299 is on file with the Clerk of the United States District Court at Bridgeport, Connecticut. A copy is also hereto attached.

14a. The application for the order authorizing and approving the interception of wire communications was made by John R. Tarrant. The making of that application was authorized by John N. Mitchell and Henry E. Petersen as set forth in response to A-6c.

b. A copy of the affidavit in support of the application is hereto attached. The order was entered by the Honorable M. Joseph Blumenfeld.

c. The order was applied for by John R. Tarrant.

d. A copy of the affidavit in support of the application is hereto attached.

e. A copy of the order is hereto attached.

f. The logs or monitor's notes are on file with the Clerk of the United States District Court at Bridgeport, Connecticut. Pursuant to agreement by counsel, a copy of the logs or monitor's notes is being

transmitted to Sigmund L. Miller, Attorney for Roger L. Spinelli. It is expected that Mr. Miller will make the logs available to other counsel in Criminal No. H-299.

g. All logs or monitor's notes, transcripts and tapes of the recorded conversations of the defendants are available to them. However, the government declines to make the determination for the defendants whether any non-pertinent telephone calls were placed or received. They are best equipped to make that determination.

h. Criminal Division, United States Department of Justice, Washington, D. C.

i. The government declines to state the complete employment record of Henry E. Petersen.

j. Henry E. Petersen was appointed Acting Assistant Attorney General on October 18, 1971 and appointed Assistant Attorney General on January 1, 1972.

k. (1) First Assistant to the Assistant ttorney General; (2) Assistant Attorney General for the Criminal Division.

l. Henry E. Petersen was appointed Acting Assistant Attorney General of the Criminal Division on October 18, 1971 pursuant to the authority of Section 0.132(d) of Title 18, Code of Federal Regulations. See also Sections 509 and 510 of Title 28, United States Code, and Section 301 of Title 5, United States Code.

Mr. Petersen received his first commission on January 1, 1972. On February 3, 1972 the Senate confirmed the Executive nomination of Mr. Petersen as Assistant Attorney General. Congressional Record, pg. S. 1166. Mr. Petersen received his second commission on February 7, 1972.

15. Wire communications of the defendants were intercepted for a period of four days.

16. The last date on which the order authorizing interception of wire communications was in effect was December 30, 1971.

17. The original tapes of recorded conversations, a copy of the original tapes, and the original transcript of the tape recorded conversations are in the custody of the Federal Bureau of Investigation at New Haven, Connecticut. A copy of the transcript of the recorded conversations is on file with the Clerk of the United States District

Court at Bridgeport, Connecticut, and a copy is in the possession of John R. Tarrant, Special Attorney, United States Department of Justice.

18. The telephone numbers to and from which wire communications were intercepted and which relate to Criminal Indictment No. H-299 include:

333-1224	372-9133
336-5976	372-1464
929-4263	367-3858
929-5864	335-6104
372-5434	374-4864
367-6288	268-6875
367-0461	223-984-8859
334-5278	223-985-8880
384-8656	375-3022
268-5142	367-9744
268-2235	777-6647
377-4210	488-4662
378-1251	378-8211
268-2214	372-0565
372-3835	374-3737

19. Wire communications relating to Criminal Indictment No. H-299 were intercepted on December 17, 1971, December 18, 1971, December 19, 1971 and December 20, 1971.

On December 17, 1971 the interception of wire communications over telephone No. 333-1224 commenced at approximately 6:12 P. M. and terminated at approximately 8:00 P. M., and over telephone No. 336-5976 commenced at approximately 6:10 P. M. and terminated at approximately 8:00 P. M. On December 18, 1971 the interception of wire communications over telephone No. 333-1224 commenced at approximately 12:00 noon and terminated at approximately 8:00 P. M. and over telephone No. 336-5976 commenced at approximately 12:00 noon and terminated at approximately 8:00 P. M. On December 19, 1971 the interception of wire communications over telephone No. 333-1224 commenced at approximately 12:00 noon and terminated at approximately 4:45 P. M. and over telephone No. 336-5976 commenced at approximately 12:00 noon and terminated at approximately 4:45 P. M. On December 20, 1971 the interception of wire communications over telephone No. 333-1224 commenced at approximately 12:00 noon and terminated at approximately 7:30 P. M. and over telephone No. 336-5976 commenced at approximately 12:00 noon and terminated at approximately 7:45 P. M.

20a. The nature and location from which the wire communications were intercepted are set forth above in response No. 7. The recording equipment attached to the leased telephone lines consisted of tape

recorders and dial impulse recorders, also known as pen register devices.

Regarding telephone No. 333-1224, the equipment utilized included Magnacord Transport Serial No. BT 251-33, Magnacord Amplifier Serial No. A-542 B, 6A Amplifier Serial No. 241, 6AR Pen Register Serial No. 332 and Pen Register Device Serial No. 1.

Regarding telephone No. 336-5976, the equipment utilized included Magnacord Transport Serial No. T-690, Magnacord Amplifier Serial No. AS15-B, 6A Amplifier Serial No. 109, 6AR Pen Register Serial No. 341 and Pen Register Device Serial No. 11.

The year of manufacture of the aforementioned items is not known.

The above-listed items are available for inspection at the office of the Federal Bureau of Investigation, 770 Chapel Street, New Haven, Connecticut. It is requested that contact be made with Special Agent Henry J. Flynn, Jr. (203-384-8251), Bridgeport, Connecticut, to arrange an appointment.

b. The individuals who participated in the installation and operation of the equipment utilized in the interception include:

Edward J. McKeon
John O'Connor
Robert C. Puckett
William C. Hendricks
Robert G. O'Neil
Gary E. McWhorter
Phillip S. Todaro
James P. McNamara
Richard E. Lester
Maximilian J. Thiel
Henry J. Flynn, Jr.
Edwin W. Buffum

22. No request was made for postponement of the service of the inventory pursuant to Title 18, United States Code, Section 2518(d).

23. With regard to logs, tapes and transcripts of intercepted conversations as to which the defendants are "aggrieved persons," as that term is defined in Section 2510(11) of Title 18, United States Code; the logs or monitor's notes, and the transcripts which the Federal Bureau of Investigation has prepared, are on file with the Clerk of the United States District Court at Bridgeport, Connecticut. The tapes of recorded conversations are available for listening at the office of the Federal Bureau of Investigation, 770 Chapel Street, New Haven, Connecticut. It is requested that contact be made with Special Agent Henry J. Flynn, Jr. (203-384-8251), Bridgeport, Connecticut, to arrange an appointment to listen to the tapes.

Pursuant to agreement by counsel, a copy of the logs or monitor's notes is being furnished to Mr. Miller, Attorney for Roger L. Spinelli. It is expected that Mr. Miller will make the logs available to other counsel in Criminal Indictment No. H-299.

24. On September 24, 1971 a Special Agent of the Federal Bureau of Investigation was present at the New Frontier Restaurant, 2765 Main Street, Bridgeport, Connecticut, and overheard Roger Spinelli, Roger Woznick and two other males talking about line information. Spinelli was heard to say to Woznick "You called and I gave you the line, now I want some of your action." Woznick also mentioned getting the line from Billy. Also during this conversation Woznick mentioned telephone No. 368-6878 as being his number.

There was no other non-electronic surveillance of the defendants within the meaning of Katz v. United States, 389 U.S. 347 (1967).

25. The government presently anticipates identifying the participants in the intercepted wire communications by voice recognition. There has been no identification of voices of the defendants by electronic means.

26. The government opposes production of the grand jury minutes prior to trial. They will be available in accordance with Section 3500 of Title 18, United States Code.

27. All material falling within the scope of Rule 16b is available for inspection at the office of the Federal Bureau of Investigation, 770 Chapel Street, New Haven, Connecticut. It is requested that contact be made with Special Agent Henry J. Flynn, Jr. (203-384-8251), Bridgeport, Connecticut, to arrange for an appointment to inspect the documents.

28. The government is not aware presently of any information falling within the rule of Brady v. Maryland. However, the duty to disclose such information is a continuing one and should such information become known to the government it will be produced immediately.

29, 30. The identities of the persons who participated in the proceedings leading to the application for the interception order in this case are set forth in the moving papers and affidavits hereto attached.

31. The government opposes this disclosure.

32. The government opposes this production.

33. The government opposes this disclosure.

34. Criminal Indictment No. H-299 does not refer to persons "being unknown to the Grand Jury."

35. The government opposes election at this time.

36. The government opposes election at this time.

37. The government opposes election at this time.

38. The places at which the illegal gambling business charged in Criminal Indictment No. H-299 was conducted, managed, supervised and directed include:

Apartment C-3, 215 Barnum Avenue, Bridgeport
Building 47, Apartment 335, Success Park, Bridgeport
45 Rose Street, Bridgeport
37 Boston Terrace, First Floor, Bridgeport
45 Johnson Street, Trumbull
4805 Main Street, Stratford
60 Cliffland Road, Stratford
5 Craig Drive, Monroe
365 Church Hill Road, Fairfield
4425 Main Street, Bridgeport
Pathmark Supermarket area, Bridgeport

B. Motion of the Defendants John J. DeLucia and Louis Varvello

Demands 1 through 28 of the defendants DeLucia and Varvella's motion for discovery and inspection are identical to demands 1 through 28 of the defendant Spinelli.

29. Pursuant to agreement by counsel, a copy of the logs is being transmitted to Sigmund L. Miller, Attorney for Roger L. Spinelli. It is expected that Mr. Miller will make the logs available to other counsel in Criminal No. H-299.

30, 31. All logs, tapes and transcripts of the recorded conversations of the defendants are available to them. The government, however, declines to make the determination for the defendants whether any personal, non-criminal or non-pertinent telephone calls were placed or received. They are best equipped to make that determination.

32. The government is not aware of the defendants charged in Criminal Indictment No. H-299 using alias names.

C. Motion of the Defendant Michael Piazza

1. Written or recorded statements made by the defendant have been provided in response to demand A-1 above.

2. The search warrants and supporting affidavits which formed a basis for Criminal Indictment No. H-299 are on file with the Clerk of the United States District Court at Bridgeport, Connecticut.

3. All material falling within the scope of Rule 16b is available for inspection at the office of the Federal Bureau of Investigation, 770 Chapel Street, New Haven, Connecticut. It is requested that contact be made with Special Agent Henry J. Flynn, Jr. (203-384-8251), Bridgeport, Connecticut, to inspect the documents.

D. Supplemental Motion of the Defendant Michael Piazza

1. A copy of the interception order entered December 16, 1971 is hereto attached.

2. A copy of the pen register order entered December 16, 1971 is hereto attached.

3. A copy of the supporting documents upon which the orders of December 16, 1971 were entered is hereto attached.

4. A transcript of the telephone conversations which formed a basis for Criminal Indictment No. H-299 is on file with the Clerk of the United States District Court, Bridgeport, Connecticut.

E. Motion of the Defendant Angelo Colangelo

1. Written or recorded statements made by the defendant have been provided in response to demand A-1 above.

2. The search warrants and supporting affidavits which formed a basis for Criminal Indictment No. H-299 are on file with the Clerk of the United States District Court at Bridgeport, Connecticut.

3. All material falling within the scope of Rule 16b is available for inspection at the office of the Federal Bureau of Investigation, 770 Chapel Street, New Haven, Connecticut. It is requested that contact be made with Special Agent Henry J. Flynn, Jr. (203-384-8251), Bridgeport, Connecticut, to inspect the documents.

4. A copy of the interception order entered December 16, 1971 is hereto attached.

5. A copy of the pen register order entered December 16, 1971 is hereto attached.

6. A copy of the supporting documents upon which the orders of December 16, 1971 were entered is hereto attached.

7. A transcript of the telephone conversations which formed a basis for Criminal Indictment No. H-299 is on file with the Clerk of the United States District Court, Bridgeport, Connecticut.

F. Motion of the Defendants Albert Moretti, Sr. and Albert Moretti, Jr.

Demands 1 through 32 of the defendant Morettis' motion for discovery and inspection are identical to the demands of the defendants DeLucia and Varvella. Therefore, the responses to those motions should suffice with the following exceptions.

23b. The defendant Albert Paul Moretti, Sr., was the subject of electronic surveillance conducted on July 20 and 21, 1964. Since the electronic surveillance occurred prior to June 19, 1968 and more than five years prior to December 17, 1971, the date of the offense alleged in Criminal Indictment No. H-299, the logs of such surveillance are not subject to production in accordance with the provisions of Section 3504 of Title 18, United States Code.

24a. On December 19, 1971 a Special Agent of the Federal Bureau of Investigation observed Albert Paul Moretti, Jr., at 45 Johnson Street, Trumbull, Connecticut.

33. On March 10, 1972, pursuant to Section 2518(8)(d) of Title 18, United States Code, notice was given to Albert P. Moretti, Jr., by certified mail, receipt No. 910532. Notice was not served on Albert P. Moretti, Sr.

G. Motion of the Defendant Ralph M. Roballey, Jr.

Demands 1 through 32 of the defendant Roballey's motion for discovery and inspection are identical to the demands of the defendants DeLucia and Varvella. Therefore, the responses to those motions should suffice.

H. Motion of the Defendant Angelo Colangelo

Demands 1 through 32 of the defendant Colangelo's motion for discovery and inspection are identical to the demands of the defendants DeLucia and Varvella. Therefore, the responses to those motions should suffice.

I. Motion of the Defendant Edward C. Stoll

Demands 1 through 38 of the defendant Stoll's motion for discovery and inspection are identical to the demands of the defendant Spinelli. Therefore, the responses to those demands should suffice with the following exception.

31a. The search warrants and supporting affidavit are on file with the Clerk of the United States District Court at Bridgeport, Connecticut, for inspection and copying.

Respectfully submitted,

John R. Tarrant.

JOHN R. TARRANT
Special Attorney
U. S. Department of Justice

CERTIFICATE OF SERVICE

I, John R. Tarrant, Special Attorney, United States Department of Justice, hereby certify that I have served a copy of the government's DISCOVERY AND INSPECTION upon Attorneys Sigmund L. Miller, 855 Main Street, Bridgeport, Connecticut 06603; Hubert J. Santos, Federal Public Defender, 450 Main Street, Hartford, Connecticut; Sherin V. Reynolds, 955 Main Street, Bridgeport, Connecticut 06603; Jordon R. Lustig, 1016 Broad Street, Bridgeport, Connecticut; Charles Hankin, 1330 Fairfield Avenue, Bridgeport, Connecticut; Angelo P. Costa, 2145 North Avenue, Bridgeport, Connecticut 06604; W. Paul Flynn, Post Office Box 799, New Haven, Connecticut 06503; Edward G. Burstein, The First Connecticut Building, 177 State Street, Bridgeport, Connecticut 06603; Thomas M. Yuditski, 945 Main Street, Bridgeport, Connecticut; Joseph Bilinkie, 1115 Main Street, Bridgeport, Connecticut 06604; attorneys for the defendants in this case, by mailing a copy to each attorney at his respective address in an official franked envelope.

April 2, 1973.

John R. Tarrant

John R. Tarrant
Special Attorney
United States Department of Justice

1. Statements

Roger L. Spinelli - 1/1/72; 1/20/72
Michael Piazza - 1/21/72
Louis Varvello - 1/18/72
Ralph Robailey, Jr. - 1/24/72; 6/20/72
Edward C. Stoll - 1/1/72
Angelo Colangelo - 1/14/72

2. Logs - U.S.D.C. - Ct. #18: 333-1224 and U.S.D.C. - Ct. #19: 336-5976 dated

12/17/71
12/18/71
12/19/71
12/20/71

Note: Only one copy provided directly to defense, that to Sigmund L. Miller. Copy also on file with Clerk, United States District Court.

3. Order Authorizing Interception of Wire Communications.

4. Application for Interception Order.

5. Letter permitting filing of Application.

6. Affidavit of John N. Mitchell.

7. Memorandum of John N. Mitchell.

8. Affidavit of Henry E. Petersen.

9. Affidavit in support of Application for Interception Order.

10. Report to the Court.

11. Laboratory Report dated June 7, 1972.

Note: U.S.D.C. - Ct. #18 refers to telephone No. 333-1224 and U.S.D.C. - Ct. #19 refers to telephone No. 336-5976.

12. Laboratory Report dated March 15, 1972.

Note:

Item	Address Searched
3	Building 47, Apartment 335 Success Park Bridgeport, Connecticut
4	5 Craig Drive Monroe, Connecticut
10	4805 Main Street Bridgeport, Connecticut
11	37 Boston Terrace Bridgeport, Connecticut
12	60 Cliffland Road Stratford, Connecticut

Team	Address Searched
15	45 Rose Street Bridgeport, Connecticut
16	215 Barnum Avenue Bridgeport, Connecticut
17	45 Johnson Street Trumbull, Connecticut
18	3[illegible] Church Hill Road Bridgeport, Connecticut

13. Order for Pen Register

14. Application for Pen Register

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA :

: CRIMINAL NO. B 299

v. :

ROGER L. SPINELLI, ET ALS. :

MOTION FOR LEAVE TO
TAKE DEPOSITION

The Defendant, ROGER L. SPINELLI, moves pursuant to Rule 15(a) of the Federal Rules of Criminal Procedure, for an order granting him leave to take the deposition of HENRY E. PETERSEN, ASSISTANT ATTORNEY GENERAL OF THE UNITED STATES, whose business address is the Criminal Division, United States Department of Justice, Washington, D.C., on oral examination, on the following grounds:

(1) That Henry E. Petersen may be unable to attend or be prevented from attending a trial or hearing herein.

(2) That the testimony of the witness is material, and

(3) That it is necessary to take the deposition of Henry E. Petersen in order to prevent a failure of justice.

Dated at Bridgeport, Connecticut, this 25th day of June, 1973.

THE DEFENDANT,
ROGER L. SPINELLI,

BY _____
SIGMUND L. MILLER, P. C.
HIS ATTORNEY

LAW OFFICES
SIGMUND L. MILLER, P.C.
835 MAIN STREET
BRIDGEPORT, CONN. 06603

CERTIFICATION

I hereby certify that a copy of the foregoing has been sent this 25th day of June, 1973, to all counsel of record.

SIGMUND L. MILLER

SIGMUND L. MILLER
ATTORNEY FOR THE DEFENDANT, ROGER L. SPINELLI

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	)	
	)	
v.	)	CRIMINAL NO. H-299
	)	
ROGER L. SPINELLI, ET AL	)	

MOTION FOR DISCOVERY AND INSPECTION

Now comes the United States of America by and through its Attorney, John R. Tarrant, Special Attorney, United States Department of Justice and respectfully states as follows:

On July 23, 1973 there came on for hearing before this court a motion for discovery wherein the defendant Roger L. Spinelli sought to obtain information relative to the propriety of the authorization for interception of wire communications in the case of United States v. Roger L. Spinelli, et al, Cr. No. H-299. At that time counsel for Spinelli requested exemplars of the initials "J.N.M." of former Attorney General John N. Mitchell.

With regard to this case, the initials "J.N.M." appear on a memorandum dated December 15, 1971 from John N. Mitchell to Henry E. Petersen entitled Interception Order Authorization.

Counsel for the United States has been unsuccessful in attempting to secure exemplars of Mr. Mitchell's initials. Alternatively, however, there is submitted herewith an affidavit of Sol Lindenbaum identifying the initials of Mr. Mitchell on the December 15, 1971 memorandum. Mr. Lindenbaum served as Executive Assistant to Attorney General John N. Mitchell.

Respectfully submitted

STEWART H. JONES
UNITED STATES ATTORNEY

GERALD E. McDOWELL
Special Attorney
U.S. Department of Justice

By: _____
JOHN R. TARRANT
Special Attorney
U.S. Department of Justice

765

CERTIFICATE OF SERVICE

Boston, Massachusetts
8-28-73

I, John R. Tarrant, Special Attorney, United States Department of Justice, hereby certify that copies of the foregoing MOTION FOR DISCOVERY AND INSPECTION were on this date mailed, postage prepaid, to the following attorneys of record.

Sigmund L. Miller, P.C.
855 Main Street
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Thomas M. Clifford, Esq.
Federal Public Defender
770 Chapel Street
New Haven, Connecticut

John R. Tarrant

John R. Tarrant-Special Attorney
U.S. Department of Justice

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	
	:	
v.	:	Criminal No. H-298
	:	
WILLIAM R. BALOG, et. al.	:	

UNITED STATES OF AMERICA	:	
	:	
v.	:	Criminal No. H-299
	:	
ROGER L. SPINELLI, et. al.	:	

AFFIDAVIT

District of Columbia:

Sol Lindenbaum, being duly sworn, deposes and says:

I continuously served in the position of Executive Assistant to the Attorney General of the United States from April 11, 1967 until about July, 1973.

On December 15, 1971, Attorney General John N. Mitchell approved a request for authorization to make application for an interception order with respect to wire communications in Bridgeport, Connecticut. Attached is a copy of Attorney General Mitchell's personally initialed memorandum of that date to Henry E. Petersen reflecting his favorable action on the request.

Sol Lindenbaum

SOL LINDENBAUM
Assistant to the Attorney General
of the United States

Subscribed and sworn to before me
this 23d day of August, 1973.

Notary Public

My Commission Expires August 31, 1976

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	)	
	)	
v.	)	CRIMINAL NO. H-299
	)	
ROGER L. SPINELLI, ET AL	)	

MOTION TO RECONSIDER

Now comes the United States of America by and through its attorney, John R. Tarrant, Special Attorney, United States Department of Justice and respectfully moves this court to reconsider its order of July 23, 1973 stating as follows:

On July 26, 1973 a motion for discovery came on for hearing before this court wherein the defendant Roger L. Spinelli sought to obtain certain information in order to challenge, by way of a motion to suppress, the propriety of the authorization for wire interception under Section 2516(1)[1/] of Title 18, United States Code, in the case of United States v. Roger L. Spinelli, et al, Cr. No. H-299.

The focal point of defendant's challenge appears to be that Henry E. Petersen, while serving as Acting Attorney General for the Criminal Division, was not a proper official to authorize the wiretap application. As outlined in affidavits already before this court it is the position of the United States that the interception order authorization came from the Attorney General, John N. Mitchell.[2/]

1/ §2516(1) The Attorney General, or any Assistant Attorney General specially designated by the Attorney General, may authorize an application to a Federal judge of competent jurisdiction for, and such judge may grant in conformity with section 2518 of this chapter an order authorizing or approving the interception of wire or oral communications.....

2/ Two cases in this district which have considered the authorization question have held that when the Attorney General personally acted upon a request and communicated his favorable action by memorandum such as in this case it constituted full compliance with the authorization requirement of Section 2516(1). United States v. Consiglio, et al, Cr. No. H024 (D. Conn.) April 20, 1972; United States v. Romanello, et al. Cr. No. H-203 (D.Conn.) September 14, 1972.

At the conclusion of the July 23rd hearing this court ordered counsel for the United States to obtain:

a) an exemplar of the handwriting of Henry E. Petersen, Assistant Attorney for the Criminal Division,

b) a statement describing the appointment of acting assistants within the office of the Assistant Attorney General for the Criminal Division, and

c) an exemplar of the initials of John N. Mitchell, former Attorney General. It is with regard to the exemplar of Henry E. Petersen and the statement regarding appointments that this court is asked to reconsider.

Three recent decisions of the Second Circuit Court of Appeals clearly indicate that neither the authenticity of the signature of the Assistant Attorney General (in this case it is the Acting Assistant Attorney General) nor the procedure by which he was appointed are relevant to a determination of the authorization issue raised in this defendant's motion to suppress.

United States v. Pisacano 459 F.2 259 (2nd Cir. 1972) found that as long as the Attorney General personally authorized the application for an interception order the procedure would conform with the letter of Section 2516(1). Pisacano accepted the Department of Justice characterization of the letter, routinely sent by the Assistant Attorney General to the attorney in the field advising him that he was authorized to present the application to a judge of competent jurisdiction, as a purely ministerial act.

In United States v. Becker, 461 F.2 230 (2nd Cir. 1972) the United States admitted that the letter to the attorney in the field was signed by a Deputy Assistant Attorney General for the Assistant Attorney General. (In this case Mr. Petersen has submitted an affidavit stating he personally signed the letter.) The court in Becker held that the personal authorization of the Attorney General was enough to comply with the requirements of Section 2516(1).

In United States v. Fiorella 468 F.2 688 (2nd Cir. 1972) the United States answered defendant's motion to suppress solely by showing that the Attorney General authorized the application. The trial judge assumed that the letter to the attorney in the field was not actually signed by the Assistant Attorney General but rather by a member of his staff. The Court of Appeals found this procedure "precisely the same as those upheld by this court in United States v. Pisacano and United States v. Becker", and upheld the denial of the Motion to suppress.

The United States respectfully requests that it not be required to provide further evidence of the authenticity of Henry E. Petersen's signature or a statement describing the appointment of ranking assistants within the office of the Assistant Attorney General for the Criminal Division. For the purpose of meeting the motion to suppress which is now before this court, it is submitted that the only part of the authorization procedure which must be authenticated is that which demonstrates that the Attorney General personally authorized the application.

Respectfully submitted,

STEWART H. JONES
UNITED STATES ATTORNEY

GERALD E. McDOWELL
Special Attorney
U.S. Department of Justice

By: John R. Tarrant

JOHN R. TARRANT
Special Attorney
U.S. Department of Justice

CERTIFICATE OF SERVICE

Boston, Massachusetts

I, John R. Tarrant, Special Attorney, United States Department of Justice, hereby certify that copies of the foregoing were on this date mailed, postage prepaid, to the following attorneys of record.

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New Haven, Connecticut

John R. Tarrant--Special Attorney
U.S. Department of Justice

Dated: August 31, 1973.

U.S. DISTRICT COURT
HARTFORD, CONN.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	
V.	:	CRIMINAL NO. H-299
ROGER SPINELLI, ET. AL.	:	

RESPONSE OF THE UNITED STATES TO DEFENDANTS' MOTION TO DISMISS THE INDICTMENT AND TO DENY THE GOVERNMENT'S MOTION TO COMPEL VOICE EXEMPLARS

I.

Government Readiness For Trial

The United States agrees that the period June 29, 1972 to August 8, 1972 (40 days) is chargeable to it under the Plan for Prompt Disposition of Criminal Cases*, and puts forth, for the Court's consideration, the argument that no period, other than that between arrest and first motions, is chargeable against the government. (See Appendix, Alternative A). On August 8, 1972, the defendant filed motions which included, among others, a Suppression Motion and a Motion To Inspect Grand Jury Minutes. Those two motions were marked "Off Without Prejudice" by the Court on October 24, 1973. This would normally mean that the Motions were no longer pending in the case. On March 6, 1973, however, the Court ruled on the Motion to Inspect Grand Jury Minutes. The importance of this point stems from the fact that there is no indication (by motion, letter, memorandum, etc.), in either the government's file or the file of the Courts Clerk's Office, that the

*Hereinafter referred to as the Plan.

defendants ever renewed the motion or brought it again, by any means, to the Court's attention. We can only assume, therefore, that the issue remained pending despite the fact that it had been marked off.* The Court is aware, also, that the suppression issue - the legality of the wiretap as focused on the authorization procedures - is and has been the keystone issue in the pre-trial stage of this case. The defendants have continually reaffirmed their intention to pursue that issue to resolution. Clearly the suppression issue has always been pending in fact, if not in a technical sense. It is also clear that the general formula set out in the Plan must be adapted to individual cases and that it must be utilized in a common sense fashion which considers the realities of any particular given situation. The defendants, however, ask the Court to turn a blind eye to the realities of this situation and ignore the central fact which the government, the Court, and the defendants know to be true - that this case will never go to trial, so far as the defendants are concerned, until the suppression issue has been dealt with. The issue has been a mist which has enveloped all the proceedings since August 8, 1972, and the defendants defy logic by now claiming that the issue has not been pending. The United States would therefore argue that the entire period from the filing of the Motion to Suppress to the Stay of Proceedings has been tolled under Rule 5(a)(period of delay while proceedings concerning the defendant are pending), or 5(h)(other period of delay occasioned by exceptional circumstances). Should the Court, however, be unable to accept this position, the government would offer other alternatives for consideration.

The defendant SPINELLI has claimed the period from March 6, 1973 to June 29, 1973 based on the fact that this Court ruled on certain

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*As indicated previously, the Motion to Suppress was marked off without prejudice at the same time as the Motion to Inspect Grand Jury Minutes.

pending motions on March 6 and marked all others "Off Without Prejudice". The defendants' calculations ignore, however, the fact that one of the motions granted by this Court on that date was a motion by the defendant for a two week extension of time within which to move to dismiss. The United States believes that the period is clearly a continuance granted at the request of the defendant, and, under Rule 5(b) of the Plan, should be excluded in computing the six month period. Thus, the government would be charged with the period from March 20, 1973 to June 29, 1973, a subtotal of 101 days and a sumtotal of 141 days. (See Appendix, Alternative B).

The defendant claims the period from July 23, 1973 to November 12, 1973. This computation assumes that his Motions for Discovery and Inspection and for Leave to take Depositions (filed on June 29, 1973) had been disposed of and that there was nothing pending before the Court after the 23rd of July. However, a review of the facts indicates that the Court had not disposed of the motions but, in fact, had placed the government under an obligation to secure an exemplar of Henry Petersen's signature, an exemplar of John Mitchell's initials, and a statement describing the appointment of ranking assistants within the office of the Assistant Attorney General for the Criminal Division. In putting the government under this obligation the Court stated "What I am trying to do is avoid the deposition, by getting the answers as if they were written interrogatories". (See attached transcript). It would thus appear that the Court was understandably attempting to find a means of satisfying the defendants needs without resorting to the more extreme measure of requiring depositions, and also that the ultimate necessity for depositions had not been ruled out. The government would therefore argue that this

should be considered as a pending proceeding concerning the defendant under Rule 5(a) of the Plan and should not be charged against the government. The affected period would run from the filing of the defendant's motions (June 29, 1973) to November 12, 1973 when the Court granted a Stay of Proceedings.

In the alternative, should the Court determine that the hearing of July 23, 1973 did dispose of the defendant's pending motions, then the government would argue that the government's Motion for Discovery and Inspection, filed August 30, 1973, which was in response to defendant's motions and which was still pending when the Stay was granted, should also be considered as an excluded period during which proceedings concerning the defendant were pending. This period would add a total of 38 days chargeable against the government for a total of 179 days. (See Appendix, Alternative C).

The government would also argue that in a case involving more than one defendant (this case began with 16 defendants), in which the defendants are properly joined for trial, the filing of motions on behalf of one defendant should toll the period as to all defendants. The Courts have long recognized the need to avoid multiplicitous trials involving the same facts, issues, evidence and witnesses. See, e.g. United States v. Kahaner, 203 F.Supp. 78, 80-81 (S.D.N.Y. 1962), aff'd 317 F.2d 459 (2d Cir.), cert. denied, 375 U.S. 836 (1963). The defendants, however, argue that the period for each defendant must be computed separately. For example, in a hypothetical three-defendant case, defendant A files a Motion to Dismiss within days of his arrest; defendant B files a Motion to Suppress three months later; defendant C files no motions. For any of a number of reasons six months passes

before the Court is able to dispose of the motions. The government is unable to proceed to trial against the defendants until the motions have been disposed of. The government and the Court would be faced with a wasteful trial for defendant C while the six months would not have run as to A and B.

The government would argue that this is exactly the type of situation contemplated by Subsection 5(e) of the Plan. That rule excludes from the period chargeable against the government.

> "[A] reasonable period of delay when the defendant is joined for trial with a codefendant as to whom the time for trial has not run and there is good cause for not granting a severance. In all other cases, the defendant should be granted a severance so that he may be tried within the time limits applicable to his case." Rule 5(e) of the Plan (emphasis added).

This language clearly attempts a balancing of the competing interests of the defendant and the efficiency of the criminal justice system. If the Court accepts this rationale then the filing of motions be defendants Dana and Michael Piazza on July 18, 1972 would toll the period as to defendant SPINELLI as well, and, therefore 19 days, rather than 40, would be chargeable against the government (for a total of 120 days, excluding the period of July 23, 1973 to November 12, 1973, or a total of 158 days, including the period of July 23, 1973 to August 30, 1973). (See Appendix, Alternatives D and E).

The defendant has also claimed a 15 day period running from May 13, 1974, the date of the Giordano and Chevez decisions, to May 28, 1974, the date that Notice of Readiness was filed by the government. This calculation assumes that this Court's Stay of Proceedings was automatically lifted by the rendering of the Giordano and Chevez decisions by the Supreme Court. The United States, however, contends that this

assumption is erroneous. Logic dictates that a stay imposed by this Court can only be lifted by this Court, either sua sponte or upon motion by the parties. The granting of a stay has, in effect, removed the case from the attention of the Court and a lifting of the stay by the Court is the only fair and reasonable way to assure that both the Court and the parties are aware that the case is again in a posture to go forward. Furthermore, this Court did in fact lift its stay in December of 1974. In United States v. Aprea, 358 F.Supp. 1126 (S.D.N.Y. 1973), a stay was granted pending the outcome of the trial of a government witness. The trial ended in a hung jur The stay was not automatically lifted however, because a month later one of the defendants whose case had been stayed moved for a direction that the trial proceed "forthwith". Some time later, the Court still had the defendant's motion under consideration. Supra, at 1128. The United States would therefore argue that the 15 days claimed by the defendant cannot be charged against the government as this Court's Stay of Proceedings was effective during the period.

The Court will note that the government has always acted with dispatch in responding to motions or requests by the Court and has acted in good faith throughout the proceedings. It is the government that has pressed for a resolution of proceedings so that a trial could commence. Furthermore, the defendants have advanced no claims of prejudice, but claim only technical noncompliance. While the defendants would be entitled to a dismissal if the government has in fact violated Rule 4 of the Plan (unless the Court finds the delay to have been excusable and the government is prepared to go to trial within ten days), the government's position is that the United States has complied with the Plan

under all of the five alternative computations offered above (40 days, 141 days, 179 days, 120 days, and 158 days)*. Should the Court determine, under any one of the alternatives offered, that the government is in compliance with the Plan as to the defendant SPINELLI, then, under Rule 5(e) the government would be in compliance as to all defendants regardless of any individual computations that they might advance.

II.

Voice Exemplars

The defendants have attacked the government's Motion to Compel Voice Exemplars on two levels. First, they claim that the government's request is evidence that the government was not ready for trial when it filed its Notice of Readiness on May 28, 1974. Secondly, they allege that the motion is facially defective. The United States disagrees and contends that neither of these positions is correct.

Turning first to the question of readiness, the government attorney stated on the record, at the last hearing in this case, that the government was ready to proceed to trial on May 28, 1974 and is still ready now. As the Court is undoubtedly aware, there are many ways in which the government may offer proof of identity in this type of case; circumstantial evidence, such as toll call records, pen register records, subscriber information and surveillances; direct evidence, such as the testimony of a witness who is familiar with the voice of the speaker; and self identification by the speaker during a conversation, to name the more prominent examples. Voice comparison is but one more means by which the government can attempt to sustain its burden at trial.

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*See Appendix.

The government, in this case, was prepared, subsequent to May 28, 1974, to use some, if not all, of the above-mentioned methods at trial. However, it was subsequently decided that the additional method of comparing known voice exemplars to taped conversations should also be employed. The decision was made, to be sure, so the government could present the best possible case at trial, but also because the use of voice comparisons is an efficient, time saving method in terms of the length of trial. Voice comparison can also work to the advantage of the defendant since if no conclusion could be reached when the comparison was made this fact would become Brady material. Furthermore, the defendants can hardly claim prejudice, nor do they, since it is clear that no constitutional privilege is infringed by the compelled taking of this physical characteristic. See, United States v. Dionisio, 410 U.S. 1 (1973).

In United States v. Wolfish, _____ F.2d _____, slip opinion No. 1167 (2d Cir. August 14, 1975), the government filed Notice of Readiness on July 8, 1974. Subsequently the trial was postponed and transferred to a new judge, who set a trial date and gave the parties an opportunity to file additional motions. On August 21, 1974 the government moved for handwriting exemplars. The appellant accused the government of bad faith in filing its Notice of Readiness. In determining the issue the Court stated:

> "Appellant claims that this conduct by the government violated Rule 4 of the District Court's Rules Regarding Prompt Disposition of Criminal Cases. While the Rule provides that the government must be ready within six months from the date of arrest, the postponement here was not at the instance of the Government, but solely because of the resignation of Judge Baumen. This delay is not chargeable to the government,

and since the exemplars were sought in ample time before the delayed trial date, we can see no error. Supra, at 5639. (emphasis added).

The Court obviously had no problems with the government motion, where a trial date had already been set, so long as it did not further delay the trial. In this case the government's motion has even less impact since no trial date had been set at the time the motion was filed. In fact, the government filed its motion on January 8, 1975, following the conference with the Court in which the defendants had clearly indicated that they intended to file further motions, including motions to dismiss the indictment and suppress evidence. The government had already filed its Notice of Readiness and, as in Wolf[illegible], any delays have not been at the instance of the government.

The true facts are thus a far cry from the all or nothing situation painted by the defendants. The government can be ready for trial and yet feel a need for voice exemplars. They are desirable, but not essential; important, but not crucial. The government's case will neither stand or fall with or without them. We do however, wish to stress that the prosecution, under these circumstances, feels it is entitled to take voice exemplars. The government is entitled to pursue whatever legal and accepted means are at its disposal, which do not infringe on constitutionally protected rights of a defendant and which do not prejudice a defendant to prove the government's case at trial.

The government attorney, in making the representation to the Court that the government has been ready for trial since May 28, 1974, was well aware of his obligations as an officer of this Court. However, should this representation fail to fully satisfy the Court, the United States, at the Court's direction, will submit sworn affidavits on this point.

The defendants have also raised several issues which they claim make the government's motion facially defective. They first argue that the Court is without power to grant the government's motion. However, as the government has previously pointed out, the Court has the inherent power to order the inspection of physical characteristics of a defendant (See, Memorandum of the United States in Support of Motion to Compel Voice Exemplars, Criminal Nos. H-298 and H-299, filed January 8, 1975), and Courts have regularly issued orders compelling handwriting and voice exemplars at the post-indictment stage of proceedings. See, United States v. Franks, 511 F.2d 25, 32 (6th Cir. 1975); United States v. Lincoln, 494 F.2d 833 (9th Cir. 1974); United States v. Rothman, 463 F.2d 488, 490 (2d Cir. 1972); United States v. Rogers, 329 F.Supp. 327 (E.D.Wis. 1971); United States v. Viguera, 307 F.Supp. 136 (S.D.N.Y. 1967). The materiality of the voice exemplars is self evident since the defendants are charged with conducting an illegal gambling business (18 United States Code, Section 1955), and the government's proof, as the defendants well know, comes in large part from intercepted wire communications of the defendants. The request is not unreasonable since no constitutional infringement is involved, the defendants are not prejudiced by the taking of physical characteristics, and the Court is aware of the purpose of the request.

The defendants further contend that the government's motion must be accompanied by an affidavit. They ignore, however, that affidavits are used, in relation to grand jury proceedings, when the government is requesting a Court to enforce a grand jury subpoena. The affidavit serves a specific purpose in allowing an uninformed Court to satisfy itself of the propriety of the subpoena and that a proper purpose exists. See, In Re Grand Jury Proceedings, 507 F.2d 963, 964 (3d Cir. 1975). In

other words, the affidavit provides assurance to the Court that the grand jury is not being used as an "instrument of oppression". See, United States v. Dionisio, supra, at 12. A post-indictment situation, however, is radically different because the witness is now a defendant facing specific, formal charges, and the Court is aware of and fully involved in the proceedings. In this case, as pointed out above, the relevancy of voice exemplars is self-evidence since the case is based on interception of the defendants own conversations. The power to compel production, therefore, should exist a fortiori when a defendant rather than a witness is involved. It is also self-evident that the exemplars will be used solely to measure the physical properties of the defendants' voices since the motion specifies that they will be asked to recite a paragraph relating to the Declaration of Independence, as opposed to reading actual transcripts of intercepted conversations. Such an exemplar could hardly be used for "testimonial or communicative content". In passing it should also be mentioned that the defendants do not cite, nor is the government able to find, any cases which set down a requirement that voice exemplars be destroyed at the termination of the proceeding.

Finally, the defendants devote a considerable portion of their memorandum to opposing the use of "voice-prints". The government had felt that its position on this issue had been made clear at the last oral argument. However, we will re-emphasize that the government is not contemplating the use of "voice-prints" in this case. The only examination that will be conducted will be simply the aural comparison of the exemplars to the intercepted wire communications.

CONCLUSION

Based on the above-stated reasoning and authorities, the United States respectfully urges this honorable Court to deny the defendant's

Motion to Dismiss the Indictment, and to grant the government's Motion to Compel Voice Exemplars.

UNITED STATES OF AMERICA

PETER C. DORSEY
United States Attorney

BY: Peter R. Casey III

PETER R. CASEY, III
Special Attorney
U.S. Department of Justice

C E R T I F I C A T I O N

This is to certify that copies of the foregoing Response have been mailed, postage prepaid, this 12th day of December, 1975 at Hartford, Connecticut to all counsel of record.

Peter R. Casey III

PETER R. CASEY, III
Special Attorney
U.S. Department of Justice

APPENDIX

SUMMARY OF GOVERNMENT CALCULATIONS FOR H-299

ALTERNATIVES	PERIODS	TOTAL DAYS*
A.	6/29/72 - 8/8/72	40
B.	6/29/72 - 8/8/72 3/30/73 - 6/29/73	141
C.	6/29/72 - 8/8/72 3/30/73 - 6/29/73 7/23/73 - 8/30/73	179
D.**	6/29/72 - 7/18/72 3/30/73 - 6/29/73	120
E.**	6/29/72 - 7/18/72 3/30/73 - 6/29/73 7/23/73 - 8/30/73	158

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*All calculations assume that this Court's Stay of Proceedings was not automatically lifted on May 13, 1974.

**Assumes filing of Piazza motions tolled period as to all defendants.

FILED

OCT 20 1 29 PM '76

CLERK
U.S. DISTRICT COURT
BRIDGEPORT, CONN.

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA :

v. : DOCKET NO. H-299 Cr.

ROGER L. SPINELLI, ET AL :

NOTICE OF APPEAL

Notice is hereby given that the Defendant, Roger L. Spinelli, above named, appeals to the United States Court of Appeals for the Second Circuit from the judgment of conviction and sentence entered in the above entitled case on October 12, 1976.

Dated at Bridgeport, Connecticut, this 20th day of October, 1976.

THE DEFENDANT,
ROGER L. SPINELLI

BY: Sigmund L. Miller
SIGMUND L. MILLER
SIGMUND L. MILLER, P.C.
HIS ATTORNEY

CERTIFICATION

This is to certify that a copy of the foregoing has been sent this 20th day of October, 1976, to the following:

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787

UNITED STATES DISTRICT COURT

DISTRICT of Connecticut

FILED

Docket Number OCT 28 4 27 PM '76

CLERK
U.S. DISTRICT COURT
BRIDGEPORT, CONN

ZAMPANO, J.
(District Court Judge)

UNITED STATES OF AMERICA

V.

JOHN J. DeLUCIA, ET AL

NOTICE OF APPEAL

Notice is hereby given that JOHN J. DeLUCIA appeals to the United States Court of Appeals for the Second Circuit from the ☐ Judgment ☐ order ☐ other (specify) Judgment of Conviction AND Sentence entered in this action on October 28, 1976. (Date)

JAMES M. DIORIO
(Counsel for Appellant)

Address 1241 MAIN ST suite 800
BRIDGEPORT CONN 06604

Date October 28, 1976
To:

Phone Number 367-5355

ADD ADDITIONAL PAGE IF NECESSARY

(TO BE COMPLETED BY ATTORNEY) TRANSCRIPT INFORMATION – FORM B

▶ QUESTIONNAIRE

☑ I am ordering a transcript
☐ I am not ordering a transcript
Reason:
☐ Daily copy is available
☐ U.S. Attorney has placed order
☐ Other. Attach explanation

▶ TRANSCRIPT ORDER

Prepare transcript of
☑ Pre-trial proceedings
☐ Trial
☑ Sentence
☐ Post-trial proceedings

▶ DESCRIPTION OF PROCEEDINGS FOR WHICH TRANSCRIPT IS REQUIRED (INCLUDE DATE).

7/3/72 Magistrates Papers
6/28/72 Bench warrants issued
9/24/72 9/13/76
Oct 18, 1976

The ATTORNEY certifies that he will make satisfactory arrangements with the court reporter for payment of the cost of the transcript. (FRAP 10(b)) ▶ Method of payment ☑ Funds ☐ CJA Form 21

ATTORNEY'S signature James M Diorio DATE Oct 28, 1976

▶ COURT REPORTER ACKNOWLEDGEMENT

To be completed by Court Reporter and forwarded to Court of Appeals.

Date order received	Estimated completion date	Estimated number of pages.

Date _____ Signature _____ (Court Reporter)

ORIGINAL
787a

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JUDGMENT AND COMMITMENT (Rev. 2-68) Cr. Form No. 25

United States District Court

FOR THE

DISTRICT OF CONNECTICUT

FILED

OCT 13 3 58 PM '76

U.S. DISTRICT COURT
NEW HAVEN, CONN.

United States of America

v.

ROGER L. SPINELLI

No. H-299 Criminal

On this 12th day of October, 1976 came the attorney for the government and the defendant appeared in person and [1] by counsel

IT IS ADJUDGED that the defendant upon his plea of [2] nolo contendere and a finding of guilty by the Court has been convicted of the offense of violation of Title 18, Section 1955 and 2, of the United States Code (did wilfully and knowingly conduct, finance, manage, supervise, direct and own a part of an illegal gambling business)

as charged [3] in Count One

and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of [4] one (1) year on Count One; execution of sentence of imprisonment is suspended after three (3) months and the defendant is placed on probation for a period of two (2) years.

IT IS further ADJUDGED that [4] the defendant is required to pay a fine in the amount of Two Thousand Dollars ($2,000.00) on Count One. Said fine is to be paid within one (1) year.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

Robert C. Zampano

United States District Judge.

The Court recommends commitment to [6]

Clerk.

[1] Insert "by [name of counsel], counsel" or without counsel; the court advised the defendant of his rights to counsel and asked him whether he desired to have counsel appointed by the court, and the defendant thereupon stated that he waived the right to the assistance of counsel." [2] Insert (1) "guilty and the court being satisfied there is a factual basis for the plea," (2) "not guilty, and a verdict of guilty," (3) "not guilty and a finding of guilty," or (4) "nolo contendere," as the case may be. [3] Insert "in count(s) number " if required [4] Enter (1) sentence or sentences, specifying counts if any; (2) whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin with reference to termination of preceding term or to any other outstanding unserved sentence; (3) whether defendant is to be further imprisoned until payment of the fine or fine and costs, or until he is otherwise discharged as provided by law. [5] Enter any order with respect to suspension and probation. [6] For use of Court to recommend a particular institution.

788 755

A F F I D A V I T

Your Affiant, Danny F. Steinke, a Special Agent of the Federal Bureau of Investigation, being duly sworn, states:

Your Affiant has been a Special Agent of the Federal Bureau of Investigation for fifteen months in which time Your Affiant has participated in four full-scale gambling investigations and has participated in the preparation and execution of four wire intercepts obtained pursuant to Title III of the Omnibus Crime Control and Safe Streets Act of 1968. As a result of his formal training with the Federal Bureau of Investigation and experience gathered from your Affiant's participation in the investigation of illegal gambling operations, your Affiant has become aware of the modus operandi which is commonly utilized in sports bookmaking operations:

SPORTS BOOKMAKING

Betting on sporting events and contests is prohibited in the State of Connecticut. Nevertheless, as a result of the demand by a segment of the community for betting services and the substantial profits which can be derived from illegal bookmaking, career bookmakers, having organized crime connections, traditionally have provided this illegal service. An illegal sports bookmaking operation normally involves a number of parties whose roles are stereotyped:

The "players" bet a sum of money upon the outcome of a future specified sporting event. The wager or bet is made with a "writer," sometimes called a "runner" or "pick-up man," who is an agent or employee of the gambling operation or "organization" and who gambles that the contingency, which would enable the player to win, will not

occur. While some independent writers do operate, the more common pattern is for the writer to be a mere agent or employee of an organization. In this way, the writer avails himself to the financial backing provided by the organized crime syndicate with its extensive financial resources. While the writer is the most vulnerable to detection, he receives a regular commission based upon a percentage of the profits earned from the bets placed with him and he enjoys the security of being insulated from sudden financial disaster should any player score a large win.

The writer records each bet from his players who are known personally to him and who generally have code names. He then telephones his bets or "action" to the telephone operator at a centralized "Office" or "Book" which may service a number of writers. The operator will record each bet on a "tally sheet" maintained for each writer. The Book may also accept large bets from individual players who are well known and trusted by the upper echelons of the organization. Most writers are required to phone in their daily bets or "action" to the Book before the sports event which is the subject of the bet, in order to protect against false claims by dishonest players or writers. Some few trusted writers, who have independent stature in the organized crime hierarchy, are normally permitted to turn in their action at the end of the day directly to the supervisor of the Book, who may or may not be the telephone operator of the Book. At the end of each day's operation, the supervisor of the Book and/or its owner or "backer," and his most trusted employees and associates will review the tally sheets and determine the wins and losses of each writer and player. These are then balanced against the bettors running account.

Usually the following day, before the Book opens, the operator will pick up the records from the supervisor so that he will be able to give each writer or player an accounting for the preceding day's activities, as well as a total figure of the current amount won or lost. If the bettor, whether a player or writer, agrees to the accounting, a single figure representing the balance owed to or due from the bettor will be recorded on a "bottom sheet" by the telephone operator of the Book, and the preceding day's records will be destroyed. If there is a disagreement over any particular figure or bet, which is not infrequent, the writer or player will compare his records with those of the Book. If the operator at the Book cannot reconcile the matter with the bettor, it will be referred to a higher authority in the organization, the supervisor of the Book or the backer, for solution. Accurate records are, therefore, essential to any illegal bookmaking operation. Experienced bookmakers normally keep such records in their automobiles, homes and places of business in order to be able to handle fraudulent claims quickly and to have the original records in past disputed cases in the event that other organized crime elements should intervene on behalf of a disappointed bettor. The records are, however, normally maintained on "flash paper" or in such a way that they can be quickly destroyed should there be a raid by law enforcement officers. Swift entry to the place where bookmakers maintain their records is, therefore, essential to prevent the destruction of essential evidence.

Individual bets are usually not handled on a cash basis for each transaction. Instead, each player will have a running account with his writers and each writer will have a similar running account with the Book. Periodically, the accounts are settled by the Book, who pay off winning players or writers and who collect from the losers

Normally, the writers, telephone operators, supervisors and backers of an illegal bookmaking operation are committed to that criminal enterprise on a career basis. There are, however, certain casual co-conspirators who periodically participate in most organized bookmaking operations. Principal among these are the owners or lessees of residences who make their homes available during specified hours of the day or night in order for the Book to operate. One of the characteristics of an illegal bookmaking operation is the fact that the location of the Book must be secretive in order to avoid detection. An office or Book will normally operate at any given location for only a few hours each day and it is not uncommon for a Book to operate from two or more different locations at different times on any given day. Simple economics, therefore, dictates the procedure of using households who are willing to accommodate the bookmaking operation for a few hours each day in return for cash payments equal to the rent and telephone bills. The advantage to this system is that the members of the organization are not required to fill out formal documents such as leases and security agreements, which might later be used in evidence against them.

Another characteristic of an illegal bookmaking operation is that the supervisor of the Book and the backer will normally have large sums of cash concealed in their automobiles, houses and offices and on their persons in order to cover any large loss by the Book. The cash assets of the organization and the Book's records are always handled in a clandestine manner in order to prevent detection since their mere existence violates both the gambling laws and the tax laws. Similarly, the supervisors and backers of a Book will normally have frequent though brief personal contacts with each other during the day's activities in order to communicate instructions and to solve routine problems of the operation.

INFORMANT INFORMATION

In July of 1971 your Affiant began an investigation into the illegal gambling activities of Nicholas V. Lanese. During the course of this investigation, your Affiant reviewed the Federal Bureau of Investigation file on Nicholas V. Lanese and coordinated the investigative efforts of a number of agents in the New Haven Field Office in assembling both background and current information on the activities of Nicholas V. Lanese and his associates. In the course of this investigation, your Affiant received information from a reliable confidential source describing an illegal sports bookmaking operation conducted, financed, managed, supervised, directed or owned in whole or in part by Nicholas V. Lanese.

During the past five months, this source provided confidential information to agents of the New Haven Office on more than two hundred occasions, which information has been corroborated by visual observations, pertinent record examinations and information from other confidential sources, who are considered reliable, as well as local police agencies. Information supplied by this source has resulted in the issuance of two warrants of arrest. These defendants are presently awaiting trial. Based upon the extent to which independent investigation has corroborated the information provided by this source, your affiant believes that this source has not furnished the New Haven Office with any false information and therefore is reliable.

This source explained that he has lived in the Bridgeport, Connecticut, area all of his life and based upon his experiences as a sports and horse bettor, he is acquainted with that city's gambling operations. Source explained further that he is personally acquainted with Nicholas V. Lanese, who controls the major sports and horse bookmaking operations in the Bridgeport area, and that Lanese resides at 8 Marigold Lane in Trumbull, Connecticut, and is the permittee for the New Frontier Restaurant, Inc., 3765 Main Street in Bridgeport, Connecticut

This source advised that in August of 1971, Nicholas V. Lanese told him that he, Lanese, had thirty people working for him in his bookmaking operation and wanted more for the upcoming football season. According to this source, Lanese stated that he preferred people who have no criminal record and divides the proceeds of his operation by keeping three-quarters for himself and giving one-quarter to his worker. Lanese explained to this source that if a person agrees to work for him as a telephone book, he must furnish Lanese with a reference, which is checked out, and put up a certain amount of capital in order to protect Lanese from serious financial loss. As part of Lanese's gambling operation, daily line information is supplied to all his workers by William R. Balog and all workers are required to lay off bets with Balog, who handles the telephone for Lanese.

Lanese also explained to this source that he sets a limit on how much a worker can in-debt himself to Lanese through lay off to Balog. This limit is based upon how much capital the worker initially put up and, once reached, Lanese requires immediate settlement. If the limit is not surpassed, settlement takes place every Monday, Tuesday since Monday night football commenced, by leaving an envelope at the bar of the New Frontier Restaurant with the name Nick Lanese written on it.

This source further advised that in a conversation with Roger L. Spinelli on August 31, 1971, source was told that he, Spinelli, operates atelephone book at telephone numbers 203-333-1224 and 203-335-6384 for Nicholas V. Lanese, obtaining his line information from, and pushing out his lay-off action to, William R. Balog.

In October of 1971, this source advised that Nicholas V. Lanese stated that he, Lanese, could be reached at telephone number 203-372-5434, through William R. Balog.

Thereafter, during the months of September, October and November of 1971, this source continued to advise that Nicholas V. Lanese' illegal gambling operation continued to operate in the manner previously described with the exception that telephone number 203-335-6384 was changed to number 203-336-5976 at the book operated by Roger L. Spinelli.

BEST COPY AVAILABLE

ELECTRONIC SURVEILLANCE

On December 16, 1971, the Honorable M. Joseph Blumenfeld, United States District Court Judge for the District of Connecticut, entered an Order, pursuant to Section 2518 of Title 18, United States Code, authorizing the Federal Bureau of Investigation to intercept wire communications to and from telephone number 203-372-5434 listed in the name of JOHN CRISCUOLO at 3880 Main Street, Apartment 46, Bridgeport, Connecticut, and telephone numbers 203-333-1224 and 203-336-5976 listed in the name of SANDRA WEISBERGER at 215 Barnum Avenue, Apartment C-3, Bridgeport, Connecticut. Pursuant to that Order the Federal Bureau of Investigation intercepted conversations from December 17, 1971, through December 20, 1971, between the hours of 12:00 noon and 8:00 P.M. and recovered twenty six reels of tape recorded exculpatory wire communications.

During the period of the interceptions of wire communications to and from telephone number 372-5434 located at Apartment 46, 3880 Main Street, Bridgeport, Connecticut, in excess of 75 conversations were intercepted each day between WILLIAM R. BALOG, aka Bill, aka Billy; NICHOLAS V. LANESE, aka Nick; ROGER L. SPINELLI; JOHN J. DeLUCIA and more than eight other persons while they were conducting their illegal gambling business. These conversations between BALOG, LANESE, DeLUCIA, SPINELLI and their writers and bettors concerned obtaining and disseminating sports line and price information, the transmission and receipt of bets and wagers, the obtaining of results and disseminating those results, balancing and keeping gambling accounts arranging for meetings and the payment of gambling debts and discussions

regarding customer problems plaguing their illegal gambling business.

At 2:34 P.M., on December 17, 1971, WILLIAM BALOG, operating telephone number 372-5434, received a telephone call from NICHOLAS LANESE, at which time they discussed various writer's accounts and the financial settling of their gambling operation. Numerous individual debtors owing them money were discussed by name, including ROGER SPINELLI.

At 6:31 P.M., WILLIAM BALOG placed a telephone call to an individual named HERMAN at telephone number 374-8139 listed in the records of the Southern New England Telephone Company to Apartment 3-B, 505 Jewett Street, Bridgeport, Connecticut, and received from HERMAN the basketball price and line for that night. Thereafter between the hours of 6:33 P.M. and 7:00 P.M., WILLIAM BALOG placed successive telephone calls to MAX at telephone number 336-8177, listed in the records of the Southern New England Telephone Company to Apartment H-6, 2340 North Avenue, Bridgeport, Connecticut, in the name of Mrs. DOLORES LAMBERT; to RICH at telephone number 878-7705, listed in the records of the Southern New England Telephone Company to 177 Walnut Street, Milford, Connecticut, in the name of RICHARD N. LANESE; to CHARLIE at telephone number 268-7014 listed in the records of the Southern New England Telephone Company to 15 Cromwell Road, Trumbull, Connecticut, in the name of CHARLES SUGLIA, and to DANNY at telephone number 878-2312 listed in the records of the Southern New England Telephone Company to 17 Overlook Road, Milford, Connecticut, in the name of Mrs. DAWN GORDON, and furnished them with the basketball price and line information which he had received from HERMAN.

Thereafter from approximately 7:00 P.M. until 7:40 P.M., WILLIAM BALOG received telephone calls from MAX, RICH and DANNY, as well as several unidentified individuals transmitting bets and wagers on sporting events in excess of $16,000.

While WILLIAM BALOG was receiving bets and wagers based on the line and price information that he had previously disseminated to his writers, he received a telephone call from JOHN DeLUCIA, who advised BALOG that the basketball line which he had earlier received and disseminated was incorrect with regard to the University of Kentucky basketball game. In addition to this information, DeLUCIA placed bets and wagers with BALOG. After receiving the information relative to the mistake in the basketball line, BALOG immediately telephoned HERMAN (374-8139), MAX ([illegible]-8117), RICHIE (878-7705), CHARLIE (268-7014) and DANNY (878-[illegible]), and directed them to correct the basketball line on the University of Kentucky game.

At 7:52 P.M., on December 17, 1971, WILLIAM BALOG at Apartment 46, 3880 Main Street, Bridgeport, Connecticut, received a telephone call from NICHOLAS LANESE. During their conversation, BALOG reported to LANESE the number of bets and wagers he had recorded on sporting events that day. BALOG also informed LANESE that his brother, RICHARD LANESE, had accepted sports bets that d. from an individual identified only as ERNIE. While discussing individuals and problems connected with their gambling operation, BALOG informed LANESE that he had been unable to contact LOUIE.

The telephonic intercept reti... that prior to the last-mentioned discussion, BALOG attemp... successfully at 7:25 P.M., 7:27 P.M. and 7:39 P.M. to r... telephone number 374-4769, which is listed in the record... the Southern New England Telephone Company to 812 Thorme... t, Bridgeport, in the name of E. LIMER. The Bridgeport ... rector, however, lists the occupant at that address as LOUIS "... who through prior investigation of this case your Affiant ... come to know as "Loui... The Lip."

At 12:14 P.M., on December 18, ..., WILLIAM BALOG, using telephone number 372-5434, at Apartment ...880 Main Street, Bridgeport, Connecticut, telephonically ...cted LOUIE at telephone number 374-4769 at 812 Thorme Street, ...ort Connecticut, and discussed the amount of money LOUIE owe... G from the bets and wagers he had placed during the previou... . Thereafter at 6:32 P.M., BALOG again telephoned LOUI... lephone number 374-4769 and gave him the basketball line for th... e.

At 6:44 P.M., BALOG again con... LOUIE at telephone number 374-4769 and furnished him with ... ne on an additional basketball team.

On December 20, 1971, WILLIA... at Apartment 46, 3880 Main Street, Bridgeport, Connecticut, ... nically contacted NICHOLAS LANESE at telephone number 37... listed in the records of the Southern New England Telephone C... to The New Frontier Restaurant,3765 Main Street, Bridgeport ...ecticut, and discussed with LANESE certain problems attached t... gambling operation including money which was then owed to ... During this conversation,

LANESE informed BALOG that LOUIE The LIP had paid him the money he owed.

During the period of interception, WILLIAM BALOG at telephone number 372-5434 made nine outgoing telephone calls to telephone number 374-8139 listed in the records of the Southern New England Telephone Company to Apartment 3-B, 505 Jewett Avenue, Bridgeport, Connecticut. All of these intercepted conversations pertained to the business of gambling, more particularly the receipt of price and line information from the person answering telephone number 374-8139, who identified himself as HERMAN. In one specific conversation regarding HERMAN's indebtedness to LANESE, he informed BALOG that he was broke, but that BALOG should not tell his boss (LANESE) as HERMAN was going to see BALOG's boss.

During the period of interception, WILLIAM BALOG at telephone number 372-5434 made six outgoing telephone calls to an individual identifying himself as DANNY at telephone number 878-2312, listed in the records of the Southern New England Telephone Company to 17 Overhill Road, Milford, Connecticut. All of these intercepted conversations pertained to the business of gambling, more particularly the furnishing of price and line information to DANNY, the receipt of bets and wagers on sporting events from DANNY, discussions regarding customers and the settling of accounts and in one conversation the deduction of a commission payment from DANNY's account.

During the period of interception WILLIAM BALOG at telephone number 372-5434 placed two calls to CHARLIE at telephone number

268-7014 listed in the records of the Southern New England Telephone Company to 15 Cromwell, Trumbull, Connecticut, in the name of CHARLES SUGLIA. Both of these conversations pertained to the business of gambling and included the furnishing of price and line information by BALOG to CHARLIE. Also during the period of the interception there were recorded numerous telephone calls from CHARLIE to BALOG at telephone number 372-5434 in which CHARLIE transmitted to BALOG numerous bets and wagers on sporting events. In a separate conversation between WILLIAM BALOG and NICHOLAS LANESE, BALOG informed LANESE that CHARLIE SUGLIA owed $650 and his partner (who was not further identified) owed $950.

During the period of interception, WILLIAM BALOG at telephone number 372-5434 placed seven telephone calls to MAX at telephone number 366-8117, listed in the records of the Southern New England Telephone Company to Apartment H-6, 2340 North Avenue, Bridgeport, Connecticut. All of these intercepted conversations pertained to the business of gambling, more particularly the exchange of price and line information, the transmission of bets and wagers on sporting events by MAX and general discussion regarding betting customers.

During the period of the interception WILLIAM BALOG at telephone number 372-5434 made six telephone calls to telephone number 878-7705 and 13 telephone calls to 878-6604 to an individual who identified himself at both telephones as RICH. Records of the Southern New England Telephone Company list telephone numbers 878-7705 and 878-6604 to 177 Walnut, Milford, Connecticut, in the name of RICHARD M. LANESE. All of these intercepted conversations pertained to the business of gambling, more particularly the providing of price and line information to RICH, the receipt by BALOG of bets and wagers on sporting events and the giving of specific orders by BALOG to RICH relative to the conduct of their gambling operation.

During the period of interception WILLIAM BALOG at telephone number 372-5434 placed five calls to telephone number 333-1224 listed in the records of the SNETCO to Apartment C-3, 215 Barnum Avenue, Bridgeport, to two individuals identifying themselves as ROGER and as JOHN. All of these intercepted calls pertained to the business of gambling, in particular the furnishing to ROGER and/or JOHN price and line information and the receipt by BALOG of bets and wagers on sporting events, the review of gambling records and instructions by BALOG to ROGER and JOHN as to the amount of bets and wagers they might furnish to him.

During the period of the interceptions of wire communications to and from telephone numbers 333-1224 and 336-5976 listed in the records of the Southern New England Telephone Company to Apartment C-3, 215 Barnum Avenue, Bridgeport, Connecticut, in excess of 50 conversations were intercepted each day between ROGER L. SPINELLI, JOHN J. DELUCIA, WILLIAM R. BALOG and more than twelve other persons while they were conducting their illegal gambling business. These conversations between SPINELLI, DELUCIA, and BALOG, and their writers and bettors concerned obtaing and disseminating sports line and price information, the transmission and receipt of bets and wagers, obtaining sports results and disseminating those results, balancing and settling gambling accounts, arranging for meetings and the payment of gambling debts, and discussions regarding customer problems plaguing their illegal gambling business.

During the period of interception, JOHN J. DELUCIA and ROGERT L. SPINELLI utilizing telephone numbers 333-1224 and 336-5976 at Apartment C-3, 215 Barnum Avenue, Bridgeport, placed four outgoing calls to telephone number 268-2214 listed in the records of the Southern New England Telephone Company to 5 Craig Drive, Monroe, Connecticut, in the name of PATRICK A. CONTE. All of the intercepted conversations pertained to the business of gambling, more particularly the furnishing of price and line information to SPINELLI or DELUCIA by a female who identified herself as MARILYN. During one such conversation, MARILYN at telephone number 268-2214 stated "PAT is getting PAULY's line now", after which she furnished that line information to DELUCIA. In addition to the outgoing calls just referred to there were also a number of incoming calls from MARILYN which provided sports line and price information to DELUCIA and SPINELLI.

During the period of interception, DELUCIA and SPINELLI at Apartment C-3, 215 Barnum Avenue, Bridgeport, Connecticut, made outgoing calls to telephone number 372-3835 listed in the records of

the Southern New England Telephone Company to 365 Churchill Road, Bridgeport, Connecticut, in the name MICHAEL MAHIGEL. The purpose of these calls was to obtain price and line information and to place bets and wagers at telephone number 372-3835 with an unidentified female. During one of the aforementioned conversations, DE LUCIA stated that "MICHAEL MAHIGEL's man advised him to make certain corrections in line information."

During the period of interception, outgoing calls were made by ROGER SPINELLI at Apartment C-3, 215 Barnum Avenue, Bridgeport, to telephone number 367-0461 listed in the records of the Southern New England Telephone Company to Apartment 335 of Building 47, Success Park, Bridgeport. These conversations pertained to the business of gambling and involved general betting on sports events. In one specific conversation, however, SPINELLI instructed BOB at telephone number 367-0461 "not to accept any more bets from those guys." ROGER SPINELLI further told BOB to "tell them you can't handle it or tell them I can't handle it." ROGER SPINELLI further explained that his reason for no longer accepting wagers from these persons was that they were winning too regularly and it was too hard to collect from them.

During the period of interception, an outgoing call was made by SPINELLI at Apartment C-3, 215 Barnum Avenue, Bridgeport, to MIKE at telephone number 334-5278 listed in the Southern New England Telephone Company records to MICHAEL PIAZZA, 45 Rose Street, Bridgeport. During his conversation SPINELLI provided the sports line to MIKE and asked him if he had received a line from his people yet. Subsequently SPINELLI, while in conversation with another individual regarding a specific football game, stated "I don't have them, you'll have to bet with MIKE PIAZZA."

During the period of interception, four outgoing calls from JOHN DE LUCIA and ROGER SPINELLI at Apartment C-3, 215 Barnum

Avenue, Bridgeport, were recorded to telephone number 367-0288 listed in the records of the Southern New England Telephone Company to 455 North Summerfield Avenue, Apartment C-2, Bridgeport, Connecticut All of the intercepted conversations were received by an individual identifying himself as PERRY and pertained to the business of gambling. These calls particularly concerned the dissemination of sports price and line information by SPINELLI or DE LUCIA, their acceptance of bets and wagers on sporting events and directives given by DE LUCIA concerning whether or not this writer should accept wagers on certain sporting events. In one specific conversation, the person identified as PERRY reflected that he maintained records of all his bets and wagers.

During the period of interception, four outgoing calls were recorded from JOHN DE LUCIA and/or ROGER SPINELLI at Apartment C-3, 215 Barnum Avenue, Bridgeport to telephone number 384-8656 listed in the records of the Southern New England Telephone Company to the first floor, of 37 Boston Terrace, Bridgeport, in the name LOUIE VARVELLA. In each case the person answering the telephone identified himself as LOUIE. All intercepted conversations pertained to the business of gambling. In one specific conversation DE LUCIA gave orders to LOUIE concerning certain sporting events. In another, he corrected certain line information given to LOUIE in a previous conversation. In still another conversation it is reflected that LOUIE maintains records of his bets and wagers.

During the period of interception, an outgoing call from Apartment C-3, 215 Barnum Avenue, Bridgeport, was made to telephone number 268-5142 listed in the records of the Southern New England Telephone Company to 45 Johnson Street, Trumbull, Connecticut, in the name MARY MORETTI. This intercepted call pertained to the business of gambling, more precisely it concerned a change in line information which had previously been given by DE LUCIA to an individual who had identified himself as PAULY. Also during this call PAULY placed

two thousand dollars in wagers with DE LUCIA.

During the period of the interception, numerous telephone calls were received by DE LUCIA and SPINELLI at Apartment C-3, 215 Barnum Avenue, Bridgeport, from an individual who identified himself each time as PAULY. In one specific conversation the individual identifying himself as PAULY asked DE LUCIA the amount he owed DE LUCIA and SPINELLI. In another conversation the individual identifying himself as PAULY placed bets and wagers and asked the question, "Did my father give you the new number?" and during still another conversation SPINELLI stated to an unidentified individual that PAULY MORETTI only accepts horse bets from three particular individuals.

During the period of the interception six outgoing calls were placed by JOHN DE LUCIA or ROGER SPINELLI to telephone number 377-4210 listed in the records of the Southern New England Telephone Company to RALPH ROBALLEY, Jr., 4805 Main Street, Stratford, Connecticut. All of these intercepted calls pertained to the business of gambling, in particular, the dissemination of price and line information by DE LUCIA and specific orders concerning the acceptance of bets and wagers on certain sporting events and remarks concerning customers of the individual who answered telephone number 377-4210 and identified himself as RALPH.

During the period of interception four outgoing calls from JOHN DE LUCIA and/or ROGER SPINELLI at Apartment C-3, 215 Barnum Avenue, Bridgeport, were recorded to telephone number 378-1251 listed in the records of the Southern New England Telephone Company to EDWARD C. STOLL, 60 Clifflawn Road, Stratford, Connecticut. All of the intercepted calls pertained to the business of gambling, in particular, DE LUCIA provided sports and line information to the individual identifying himself as ED, who answered telephone number 378-1251. During other calls DE LUCIA placed bets and wagers with

ED at the same telephone number. In one particular conversation DE LUCIA advised ED after placing a large bet with him that, "If you get stuck with a game, give me your action, it's our business."

During the period of interception an outgoing call was intercepted to telephone number 878-1962 listed in the records of the Southern New England Telephone Company to DAN A. CORTIGIANO, 7 Housatonic Drive, Milford, Connecticut. In one conversation on December 18, 1971, at 7:32 P.M., DE LUCIA placed a call to telephone number 878-1962 and spoke with a female who identified herself as CYNTHIA. DE LUCIA asked for DANNY and was informed that he was out for five minutes and would call upon his return. Approximately three minutes later DE LUCIA received a call from an individual identifying himself as DANNY and they discussed wagering information. During another conversation that same date an individual identifying himself as DANNY received sports price and line information from SPINELLI and subsequently placed bets and wagers on sporting events. Subsequently an individual identifying himself as DANNY received the sports line from SPINELLI who instructed him to accept only a limited amount of wagering activity on a particular football game. Conversations on December 18, 1971, reflect that the individual identifying himself as DANNY maintains records of his bets and wagers.

During the period of interception, twenty-one outgoing calls were intercepted from Apartment C-3, 215 Barnum Avenue, Bridgeport, to telephone number 372-5434 listed in the records of the Southern New England Telephone Company to Apartment 46, 3880 Main Street, Bridgeport, Connecticut. All of these calls pertained to the business of gambling, more particularly, the transmission of bets and wagers by ROGER SPINELLI and JOHN DE LUCIA to WILLIAM BALOG, the exchanging of price and line information, accounts payable and their records for their betting customers.

Most of the conversations mentioned above involved calls between WILLIAM R. BALOG, ROGER L. SPINELLI and JOHN J. DE LUCIA

operating as books or officers, and their approximately twenty writers. Mainly these conversations involved the book disseminating price and line information to the writers and thereafter the writers transmitting to the book or office bets and wages placed by their betting customers.

In addition, several calls reveal the supervision, direction and control exercised by NICHOLAS V. LANESE over the operation of the book through his concern for delinquent accounts, his concern for the volume of betting, his directives to BALOG which are transmitted to the books and writers and, most noteably, by writers frequent references to LANESE as the "boss".

Your affiant believes, based upon his formal training regarding the workings of a gambling operation, his past experience with gambling investigations and the particular structure and modus operandi of the NICHOLAS V. LANESE bookmaking operation, that the supervisor, NICHOLAS V. LANESE the office or book operators, ROGER L. SPINELLI, WILLIAM B. BALOG and JOHN J. DE LUCIA and the approximately twenty writers, will have evidence, fruits and instrumentalities of the conspiracy in the form of slips and notebooks containing code names, personal address and telephone books containing the names, addresses and telephone numbers of other co-conspirators, including bettors, writers, operators and supervisors, original and secondary records of past disputed cases, proceeds of the illegal gambling business, flash and water soluable paper and original and secondary records of current betting activity on their person, in their homes, automobiles and booking offices.

Your affiant's reasoning for this conclusion is threefold:

First, past experience, as recently as December 11, 1971, has demonstrated that the execution of search warrants against persons occupying a position in an illegal gambling business similar

to that conducted by the aforementioned individuals have yielded such evidence.

Second, the various participants in an illegal gambling business of necessity must keep such records, documents and items in order to conduct their daily affairs and to protect themselves from false accusations of pilferage, false claims or dishonesty.

Third, since they and their business associates are committed to ancontinuing criminal enterprise as a career, they must operate in a clandestine manner but do not have secure places in which to store the records needed for the daily operation of their gambling business except on their person, in their homes, automobiles and booking offices. For example, a safety deposit box, which may serve to secrete a cash horde, is not readily accessible for day to day business, and furthermore, it necessarily involves signature cards which could be incriminating.

CONCLUSION

Wherefore, your affiant respectfully submits that, based upon the totality of the information contained hereinabove, there is probable cause for belief:

That the illegal gambling business of NICHOLAS V. LANESE as herein above described, violates the law of the State of Connecticut (53-295 and 53-298); involves five or more persons who conduct, finance, manage, supervise, direct, or own all or part of said illegal gambling business; and has remained in substantially continuous operation for a period in excess of thirty days, or has operated for two or more successive days, or had a gross revenu of $2000.00 in any single day; and is, therefore, an illegal gambli business within the meaning of Section 1955 of Title 18, United States Code;

That evidence of the continuous violation of Sections 1955 and 371 of Title 18, United States Code, in the form of account books, ledger books, sports schedules, telephone books, address books, lists of code names and numbers and financial statements, as well as fruits and instrumentalities of the aforesaid violations, in the form of betting slips and records, tally sheets, notes and documents, telephone instruments, flash and water soluable paper, other documents and the proceeds of the illegal gambling business in the form of United States currency and negotiable and non-negotiable promissory notes, will be found concealed upon the following named persons and in the following described locations:

1. NICHOLAS V. LANESE
2. New Frontier Restaurant, Main Street, Bridgeport
3. WILLIAM R. BALOG
4. Apartment 46, 3880 Main Street, Bridgeport
5. ROGER L. SPINELLI
6. JOHN J. DE LUCIA
7. Apartment C-3, 215 Barnum Avenue, Bridgeport
8. 17 Overhill Road, Milford
9. 7 Housatonic Drive, Milford
10. 5 Craig Drive, Monroe, Connecticut
11. Apartment 335, Building 47, Success Park, Bridgeport
12. 365 Churchill Road, Fairfield
13. Apartment C-2, 455 North Summerfield Avenue, Bridgeport
14. 37 Boston Terrace (first floor), Bridgeport
15. 45 Johnson Street, Trumbull
16. 4805 Main Street, Stratford
17. 60 Cliffiawn Road, Stratford
18. 177 Walnut Street, Milford

19. 45 Rose Street Bridgeport

20. Apartment 3-B, 505 Jewett Avenue, Bridgeport

21. 812 Thorme Street, Bridgeport

22. 15 Cromwell Road, Trumbull

23. Apartment H-6, 2340 North Avenue, Bridgeport

And your affiant hereby makes application for a warrant to search the hereinabove described twenty-three (23) persons and permises and to seize telephone instruments carrying telephone numbers:

203-372-5434

203-374-8139

203-366-8117

203-878-7705

203-878-6604

203-268-7014

203-878-2312

203-374-4769

203-372-9133

203-333-1224

203-336-5976

203-268-2214

203-372-3835

203-367-0461

203-334-5278

203-367-6288

203-384-8656

203-268-5142

203-377-4210

203-378-1251

203-378-1962

As well as other contraband and fruits and proceeds and instrumentalities and evidence relating to the NICHOLAS V. LANESE illegal gambling business.

&

_____

Affiant

Subscribed and sworn to

Before me this _____ day of December, 1971.

_____

United States Magistrate

ZELDES, NEEDLE & COOPER

ATTORNEYS AT LAW

JACOB D. ZELDES
ELAINE S. AMENDOLA
CHARLES M. NEEDLE
ROBERT S. COOPER
I. DOUGLAS SMIALEK
LAWRENCE A. KANASA III
ALFRED J. JENNINGS, JR.

STUART BEAR

LAFAYETTE PLAZA TOWER
333 STATE STREET
BRIDGEPORT, CONNECTICUT 06604
TELEPHONE (203) 333-9441

December 16, 1974

Honorable Robert C. Zampano
United States District Court
Post Office Building
New Haven, Connecticut

Re: No. H-298
United States v. Balog, Et Al
No. H-299
United States v. Spinelli, Et Al

Dear Judge Zampano:

Pursuant to your request at the informal chambers conference held on December 11, 1974, defense counsel in the above entitled matters held a meeting to outline their suggestions as to how these matters should proceed.

As you know, the Government and defense counsel agreed at the conference that we would start anew with any pretrial motions which have not already been resolved. It was further agreed that any motion filed on behalf of one defendant would apply to all defendants, if appropriate, and that accordingly, defense counsel would attempt to file consolidated motions where defendants wished to raise the same legal issues.

The results of the subsequent conference of defense counsel and the proposed agenda are as follows:

1. Attorney Richard Meehan will act as lead counsel. He will be assisted in that role by Attorney Harold Rosnick and Attorney Joseph Brophy. I will assist with the mechanical aspects.

2. All wish to be on record that it is the opinion of defense counsel that the stay of proceedings ordered by this Court on June 28, 1973 was terminated on May 13, 1974 when the Supreme Court decided the cases of United States v. Giordano, ___ U.S. ___, 40 L.Ed.2d 341 (1974), and United States v. Chavez, ___ U.S. ___, 40 L.Ed.2d 380 (1974), which date was set forth in the Government's Motion for a Stay of Proceedings:

"WHEREFORE, the undersigned respectfully move for a stay of proceedings in the above-entitled case pending resolution in the Supreme Court of the United States of Giordano v. United States, (C.A. 4, 1973), 469 F.2d 522, and the matters thereto related."

Defense counsel, thereby reserve and do not waive any claims which defendants may have that defendants have been deprived of their right to speedy trial.

Defense counsel suggest the following agenda:

1. The Motion of Patrick A. Conte to Dismiss the Indictment raising speedy trial issues and already on file should be heard and decided first. Defense counsel for other defendants may individually join in this motion.

2. The Motion to Suppress should be heard next in two phases.

(a) The first phase relates to the legality of the searches and seizures conducted at various premises, including, but not limited to, the validity of the search and seizure warrants, probable cause, etc. Since this phase of the Motion to Suppress does not require any evidence, resolution of this phase of the Motion to Suppress might be dispositive of some or all of the pending cases without the need for an evidentiary hearing.

(b) The second phase of the Motion to Suppress will raise the various constitutional and statutory issues involving the interception of wire communications in these cases. It was anticipated that the Court would first rule on those wire tap issues which do not require further discovery, and that defense counsel would reserve the right to file further discovery motions and take depositions relating to the wire tap issues if and when it becomes necessary in the opinion of defense counsel. In other words, many of the issues relating to the interception of wire communications such as the constitutionality of the statute authorizing the interception, the validity of the authorization, the sufficiency of the affidavit, etc. perhaps can be resolved without evidence, without further discovery and without taking the depositions of John Mitchell, Henry Peterson and other former officials of the Justice Department. But, defense counsel expressly wants to reserve the right to request an opportunity for such further discovery if it becomes necessary.

3. Supplemental discovery motions, including motions for disclosure, production and depositions shall then be heard.

4. Motion to Dismiss the Indictment shall then be heard.

5. With respect to the intercepted wire communications, assuming the issues previously raised by the Motion to Suppress are decided in favor of the Government, defense counsel reserve the right to have an evidentiary hearing on such issues as audibility of the tapes, the proper scope of the interceptions and related issues.

For the convenience of all parties involved I have annexed a list containing the name of each defendant with the name and address of his attorney. By copy of this letter to all persons concerned, I am requesting that any papers filed by any one counsel be served on all other counsel. I have mailed a copy of this letter to each attorney on the list.

Sincerely,

Elaine S. Amendola

Elaine S. Amendola

ESA:kl
Enc.

The Government in both cases is represented by:

John R. Tarrant, Esquire
United States Department of Justice
Room 1703
United States Post Office and Courthouse
Boston, Massachusetts 02109

Peter R. Casey, III, Esquire
Special Attorney
450 Main Street
Hartford, Connecticut

United States v. William R. Balog, Et Al #H-298

Defendant	Attorney
William R. Balog Nicholas V. Lanese Richard M. Lanese Nicholas Messina	Richard T. Meehan, Esquire 171 Golden Hill Street Bridgeport, Connecticut 06604
Daniel Levin Max J. Gordon (disposed of 3/26/73) Louis Mastro	Charles Hanken, Esquire 1330 Fairfield Avenue Bridgeport, Connecticut
Daniel Ricco (disposed of 2/26/73)	J. Daniel Sagarin, Esquire 855 Main Street Bridgeport, Connecticut 06604
Charles S. Suglia	Jacob D. Zeldes, Esquire Elaine S. Amendola 333 State Street Bridgeport, Connecticut 06604
Walter T. Harty	Robert J. Michael, Esquire P. O. Box 96 Brookfield, Connecticut

United States v. Roger L. Spinelli, Et Al #H-299

Defendant	Attorney
Roger L. Spinelli	Sigmund L. Miller, Esquire Harold Rosnick, Esquire 855 Main Street Bridgeport, Connecticut 06604
John J. DeLucia	John A. Arcudi, Esquire 285 Golden Hill Street Bridgeport, Connecticut 06604
Robert Cohen	Charles Hanken, Esquire 1330 Fairfield Avenue Bridgeport, Connecticut
Michael Piazza) Dana Piazza)	Joseph M. Brophy, Esquire Box 710 Westport, Connecticut
Robert T. Woznick	Angelo P. Costa, Esquire 2145 North Avenue Bridgeport, Connecticut 06604
Louis Varvella	Thomas D. Clifford, Esquire Fed. Pub. Defender Gregory B. Craig, Esquire Room 271 450 Main Street Hartford, Connecticut
Albert Paul Moretti, Jr. Albert Paul Moretti, Sr. (deceased)	W. Paul Flynn, Esquire 132 Temple Street New Haven, Connecticut
Ralph M. Roballey, Jr.	Daniel Shepro, Esquire Goldman and Rosen 177 State Street Bridgeport, Connecticut

Defendant	Attorney
Angelo Colangelo	Thomas M. Yuditski, Esquire 64 Lyon Terrace Bridgeport, Connecticut
Edward C. Stoll	Jordan R. Lustig, Esquire 1016 Broad Street Bridgeport, Connecticut
Patrick Conte	Daniel E. Brennan, Jr., Esquire 76 Lyon Terrace Bridgeport, Connecticut (Appt'd)
Marilyn Conte	William Arias, Esquire 430 Barnum Avenue Bridgeport, Connecticut (Appt'd)
Michael S. Mahigel	Philip Baroff, Esquire 333 State Street Bridgeport, Connecticut 06604
Phyllis Mahigel Delco	Richard L. Albrecht, Esquire Cohen and Wolf 955 Main Street Bridgeport, Connecticut 06604 (appt'd)

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

- - - - - - - - - - - - - - - - - x

UNITED STATES :

vs. : CRIMINAL H-299

ROGER L. SPINELLI, ET AL :

- - - - - - - - - - - - - - - - - x

New Haven, Connecticut
September 13, 1976.

B e f o r e :

HONORABLE ROBERT C. ZAMPANO, U.S.D.J.

A p p e a r a n c e s :

For the Government:

PETER R. CASEY, III, ESQ.
450 Main Street
Hartford, Connecticut 06103

For the Defendants:

GANIM, GANIM & GANIM
543 Clinton Avenue
Bridgeport, Connecticut

By: RAYMOND GANIM, ESQ.,
of counsel.

RICHARD T. MEEHAN, ESQ.
171 Golden Hill Street
Bridgeport, Connecticut

Appearances: (Continued)

CHARLES HANKEN, ESQ.
1115 Main Street
Bridgeport, Connecticut 06604

ELAINE AMENDOLA, ESQ.
333 State Street
Bridgeport, Connecticut

SIGMUND L. MILLER, ESQ.
855 Main Street
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770 Chapel Street
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W. PAUL FLYNN, ESQ.
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GOLDMAN & ROSEN
177 State Street
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By: DANIEL SHEPRO, ESQ.
of counsel

JORDAN R. LUSTIG, ESQ.
1016 Broad Street
Bridgeport, Connecticut

Appearances: (Continued)

WILLIAM ARIAS, ESQ.
430 Barnum Avenue
Bridgeport, Connecticut

VICTOR M. FERRANTE, ESQ.
285 Gold Hill Street
Bridgeport, Connecticut.

+ + +

THE COURT: In the matter of United States versus Spinelli, Criminal H-299, the record should note that this case, with the various defendants, was scheduled for trial tomorrow. It was specially assigned by the Court for trial.

The record should also note that after the case was especially assigned, counsel for the defendants and the Government in the absence of the Court engaged in plea negotiations which went on for some period of time.

The Court was informed of the plea negotiations last week. The Court did not suggest any particular sentence upon pleas to this indictment.

The Court, however, did at great length discuss with counsel two aspects of the plea negotiations: One, whether based on the representations by counsel for each side the Court would go along tentatively subject to information and presentence reports with the plea negotiations; and two, the type of plea each defendant would respond to at these proceedings.

The Court is satisfied that the representations of counsel made to the Court would permit the Court to go along tentatively with the sentences proposed by the Government.

The Court, however, reserves the right to, after reviewing the presentence reports, reject the suggested sentences.

If I do reject them, I will notify counsel and

inform counsel of the reasons why the Court cannot accept plea negotiations and allow the defendants to withdraw their plea and proceed to trial at a later date.

With respect to the type of plea to be entered by the defendants, it was agreed that if jeopardy assessments were presently pending against the defendant involved, nolo contendere pleas over the objection of the Government would be accepted by the Court.

With respect to all other defendants, the Court will accept Alford pleas.

Is that correct? Is there something I left out?

MR. CASEY: Yes, that's satisfactory.

THE COURT: Why don't we get all the defendants in the Spinelli case who are going to plead, and I will address certain questions to each one of them. They would be which ones?

MR. CASEY: That would be Roger Spinelli, John DeLucia, Robert Cohen, Louis Varvella, Ralph Rebalsky, Edward Stoll, Patrick Conte, and Marilyn Conte. That would leave a couple defendants who are in a somewhat different situation which the Court should deal with separately.

THE COURT: For the record, they are Michael Piazza?

MR. CASEY: The Government will move for

severance of Mr. Piazza.

THE COURT: Michael Piazza?

MR. CASEY: That's correct. The Government will be dismissing and providing substitute information on Albert P. Moretti, Jr., and -- I'm sorry. Did I call Mr. Roballey? And Mr. Roballey. He shouldn't be in this.

THE COURT: I will handle the Roballey case separately. Michael Mahigel and Phyllis Mahigel.

MR. CASEY: The Government would move for a severance on Michael Mahigel and the Government has dismissed the case against Phyllis Mahigel.

THE COURT: If I followed you correctly, did we discuss Roger T. Woznick?

MR. CASEY: I believe the Court already granted a severance for Roger Woznick and Angelo Colangelo.

THE COURT: Before me are all the defendants who are scheduled for trial tomorrow?

MR. CASEY: Yes, your Honor.

THE COURT: The others have been disposed of or substituted informations will be filed or have been severed?

MR. CASEY: Should the Court grant the motion to sever?

THE COURT: I will grant the motion to sever with respect to each of the defendants in question. I am going

to address certain questions to each.

MR. MILLER: Before we start, I would say on behalf of my client, and perhaps other attorneys wish it to apply to their clients, the understanding is that the U. S. Attorney has made a recommendation, which is to be the maximum sentence, however, the defendant has the right to plead and hopes to effectively obtain a suspended sentence if your Honor sees fit.

THE COURT: Yes, these are the maximum sentences but counsel, of course, -- the Court keeps an open mind on lesser sentences to which counsel may address themselves.

Of the defendants before me, which ones are going to plead nolo? I think I made a note of the ones that were involved. Nicholas Lanese, William Balog, Roger Spinelli, John DeLucia, and Louis Mastro; is that correct? Did I leave someone out?

MR. BOWMAN: I have been informed of a problem by my client. I represent Louis Varvella. While Mr. Varvella does not have a jeopardy assessment pending against him he has been ordered by the IRS, and there is a tax, from what he has told me, there is a tax investigation going on right now, and I would ask permission from the Court to be able to enter a nolo contendere.

THE COURT: I would think under those circumstances, Mr. Varvella should be included, if he knows the

Internal Revenue is ready and looking into the jeopardy assessment, and they are actually investigating and auditing his books. That leaves out Richard Lanese and Edward Stoll, who will take Alford pleas of guilty; is that correct? Is Richard Lanese here standing before me? I don't want you before me and I don't want Edward STOll. Everyone else is here?

Why don't we start out by identifying the defendants and the attorneys representing them. Start to my right --

MR. CASEY: Did you want the people for nolo pleas?

THE COURT: Yes.

MR. HANKEN: my client is Robert Cohen, and he will be an Alford plea.

THE COURT: I don't want him yet.

MR. FERRANTE: John DeLucia.

MR. MILLER: Roger Spinelli.

MR. BOWMAN: Louis Varvella.

THE COURT: The Court is going to address a series of questions to each defendant. I want each defendant to respond separately to the question, and perhaps we should start this way:

Spinelli should be first, Varvella second, and DeLucia third. When I ask the question, please listen to the

question, give your answer, and if you wish to consult with counsel before you give the answer, feel free to do so.

I would like to ask each of you if you have had a full and adequate opportunity to discuss with case with your respective attorneys.

MR. SPINELLI: I have, yes, I have.

MR. VARVELLA: Yes.

MR. DE LUCIA: Yes, I have.

THE COURT: Do you fully understand the nature of the charge against you in this indictment?

MR. SPINELLI: Yes, I do.

MR. VARVELLA: Yes.

MR. DE LUCIA: Yes.

THE COURT: Do you have any questions concerning the nature of the charge against you or the effect of your nolo contendere plea that you would like to ask me?

MR. SPINELLI: No questions, your Honor.

MR. DE LUCIA: No, sir.

MR. VARVELLA: No.

THE COURT: Do I understand that you do not wish to contest the charge against you in this indictment by going to a trial?

MR. SPINELLI: That's correct, sir.

MR. DE LUCIA: I don't wish to contest it.

MR. VARVELLA: That's correct.

THE COURT: The charge in the indictment against you is as follows: That on or about the 17th day of December, 1971, and continuing up to and including the first day of January, 1972, the three of you, the three defendants standing before me, did unlawfully, wilfully, and knowingly conduct, finance, manage, supervise, direct or own a part of an illegal gambling business, to wit: a bookmaking business, which illegal gambling business was in violation of the laws of the State of Connecticut; namely, Public Act 865, Sections 23 and 24, and which involved more than five persons who conduct, finance, manage, supervise, direct, and own a part of said business, and having a gross revenue of $2000 in any single day.

Do I understand what no one of you wishes to contest this charge by a trial which would start tomorrow?

MR. SPINELLI: That's true.

MR. DE LUCIA: True.

MR. VARVELLA: That's true.

THE COURT: Do you understand that upon your plea of nolo contendere the Government will make certain representations of its evidence against you? If those representations constitute proof of the essential elements of the crime against you, and neither you nor your attorney challenges those representations, I am going to find you guilty of the charge; do you understand that?

MR. SPINELLI: Yes.

MR. DE LUCIA: Yes.

MR. VARVELLA: Yes.

THE COURT: Do you understand that your plea of not guilty may remain on the record and that you will be entitled to a speedy trial and it would be tomorrow, and an attorney would represent you, the Government would have to prove each and every essential element of the crime charged beyond a reasonable doubt. You would have a right to be confronted by the witnesses against you, you could cross-examine those witnesses, you could call your own witnesses; you would not be compelled to incriminate yourself in any way, but do you understand by your plea of nolo contendere that you are waiving those Constitutional rights and you will not have a trial tomorrow? Do you understand that?

MR. SPINELLI: Yes, I do.

MR. DE LUCIA: Yes.

MR. VARVELLA: Yes.

THE COURT: Are your pleas of nolo contendere of your own free will?

MR. SPINELLI: Yes, they are.

MR. DE LUCIA: Yes.

MR. VARVELLA: Yes.

THE COURT: Has anyone induced you, coerced you, or in any way influenced you to plead nolo contendere

against your will?

MR. SPINELLI: No, sir.

MR. DE LUCIA: No, sir.

MR. VARVELLA: No.

THE COURT: There has been plea negotiations in this case with respect to each one of you. I am going to go over those plea negotiations. If you have any understanding that differs from what I have said, please tell me now so we will find out exactly what your understanding is of the negotiations.

MR. MILLER: This is the recommendation of the Government?

THE COURT: Yes. Let me say at the very outset the Government has recommended the sentences. I have tentatively agreed, that is, based on what your lawyer has said to me in chambers, based on what the Government has said, it seems to me these recommendations are fair and ones that I should go along with; on the other hand, if a presentence report indicates that has information that indicates I should not go along with the suggestions, I will notify you, tell you why I am not going along, and at that point you can withdraw your pleas of nolo contendere and I will strike the findings of guilty from the record.

If, on the other hand, the presentence report bears out what has been said to me in chambers, I tell you now that I will go along.

MR. MILLER: Your Honor will go along with the maximum recommendation?

THE COURT: Yes. Let's make that clear. With Mr. Spinelli, the maximum recommendation of sentence was as follows:

A one year suspended sentence after maximum of three months incarceration to be followed by two Years probation, and a fine of $2000, which would be payable in one year.

MR. MILLER: That's correct, your Honor.

THE COURT: In addition, the Government has promised not to call you as a witness at the trial of this case, if any defendants are left to go to trial, and that you would have a right to appeal any of the pretrial rulings made by this Court. Does that encompass the full understanding?

MR. MILLER: It does. I understand there was also an agreement that there would be no request that some of the defendants appear before a Grand Jury. I don't have any particular interest in that, but just to refresh your Honor's memory, perhaps Mr. Casey could enlighten us on that again.

THE COURT: I don't have any notes on that.

MR. CASEY: It was discussed, your Honor. I think the way it was left, the Government will place on the record the fact that it has no present intention to call any of these individuals before Grand Juries in the immediate future. The Government does not commit itself nor does it feel

bound to not at some point in time, should the need arise, call any of these individuals before the Grand Jury.

THE COURT: It seems to me the Government can't promise any person that a person will never be called before a Grand Jury.

MR. CASEY: I wil state for the record the Government has no present plans to call any of these individuals before the Grand Jury.

THE COURT: Aside from that representation, which was not part of the agreement as I have it, Mr. Spinelli one year suspended sentence after maximum of three months to be followed by two Years probation, a fine of $2000 and one year to pay that fine; you would have a right to an appeal of any of the Court's pretrial rulings and the Government has promised not to call you as a witness if any defendants are left in H-299.

Mr. Miller, is that correct?

MR. MILLER: That is correct. I believe something was said about specifically preserving the particular grounds of an appeal. I am ready to do so any time your Honor is ready for that.

THE COURT: I thought I said that. You have a right to an appeal of any of the pretrial rulings.

MR. CASEY: The Government would like, if it's agreeable, for the defendants to at least use some specificity.

THE COURT: The Court of Appeals would like it, too. Is there a motion to suppress that I ruled on?

MR. MILLER: I will be happy to give them to you in the order I have them written. So I am not confused, we are entering a plea specifically subject to the right to appeal the finding of guilty to be entered by the Court on the following issues:

It is expressly to be understood that in the event any of these issues are found in the defendants' favor by the Circuit Court of Appeals for this District, then the finding of guilty shall be vacated and the indictments dismissed; is that correct, Mr. Casey?

MR. CASEY: I cannot commit the Court of Appeals.

THE COURT: If the Court of Appeals finds in your favor what should happen?

MR. MILLER: All right, your Honor. The grounds are as follows:

That the Court err as argued in briefs, one, in refusing to dismiss the indictments pursuant to the Fifth and Sixth Amendment and pursuant to Rule 4 of the Second Circuit Rules regarding prompt disposition of criminal cases in that the Government was not ready to proceed, and did not proceed within six months of the date of arrest and certain other dates where no action was taken for a period of in excess of six

months; two, whether or not an application and order for wire interception under title 3 of the Omnibus Crime Control and Safety Street Act of 1968 are insufficient on htier face as indicated in our briefs in reciting that the authorizing official is even acting Assistant Attorney General as a consequence of which the contents of any intercepted wire communication and evidence derived therefrom must be suppressed; and, three, whether such contents of the intercepted wire communication and evidence derived therefrom must be suppressed in that the interception application did not adequately show why traditional investigative techniques were not sufficient; and four, whether such contents of the intercepted wire communication and evidence derived therefrom whether or not they should be suppressed where the Justice Department made improper disclosure of the contents of the wire interception, and whether the Court erred in refusing to allow the defendants to take the deposition of Henry Peterson and/or John Mitchell, or to hold an evidentiary hearing to determine who was authorizing official in regard to the wire tap application.

Thank you, your Honor.

THE COURT: I think that all can be encompassed in a concise way by saying the defendant Spinelli reserves the right to challenge the Court's rulings on the motion to suppress, motion to dismiss, and motion to take depositions.

MR. MILLER: Correct.

THE COURT: For whatever reasons stated in those motions. That's a better way of doing it.

MR. MILLER: That's correct. Thank you, your Honor.

THE COURT: Have we now got the complete agreement on the record?

MR. MITCHELL: So far as the defendant Spinelli is concerned, your Honor.

THE COURT: Mr. Spinelli, do you agree?

MR. SPINELLI: Yes, I do.

THE COURT: Do you have any other understanding of an agreement or basis upon which you are pleading nolo contendere that I have not mentioned?

MR. SPINELLI: None whatsoever.

THE COURT: With respect to the defendant Varvella, it's been agreed between the defendant and the Government to recommend the following maximum sentence:

One year suspended sentence, two years probation, $1000 fine to be paid in one year.

In addition, Mr. Varvella has a right to appeal the pretrial rulings of this Court on the motion to suppress, motion to dismiss, motion to take deposition, and also, that if any defendants are left for trial in H-299, Mr. Varvella will not be called as a witness.

MR. CASEY: There is no agreement on the reservation of rights of appeal. It's my understanding that the defendant will not reserve rights to appeal.

THE COURT: We will go back over it. One year suspended sentence, two years probation, $1000 fine to be paid in one year and I assume the Government has agreed not to call him as a witness.

MR. CASEY: Correct.

THE COURT: Is that correct, Mr. Bowman?

MR. BOWMAN: May I have a moment? That is the plea negotiation as we understand it, your Honor.

THE COURT: Do you agree, Mr. Varvella?

MR. VARVELLA: Yes.

THE COURT: Did I leave out anything?

MR. VARVELLA: No.

THE COURT: That's your complete understanding?

MR. VARVELLA: Yes.

THE COURT: Now, with respect to Mr. DeLucia: One year suspended sentence after a maximum of three months, two years probations, fine of $1000 to be paid within one year, reservation of rights to appeal this Court's rulings on the motions to suppress, motions to dismiss, and motion to take depositions, and also that you will not be called as a witness if anyone goes to trial on H-299; is that

correct, Mr. Ferrante?

MR. FERRANTE: That is correct.

THE COURT: Do you so agree?

MR. DE LUCIA: Yes.

THE COURT: You have no understanding that I have not mentioned?

MR. DE LUCIA: No, sir.

THE COURT: Do you know that you may be punished as a result of your nolo contendere plea and find you guilty? Do you know that?

MR. SPINELLI: Yes, I do.

MR. DE LUCIA: Yes, sir.

THE COURT: What is the maximum?

MR. CASEY: Five years and/or $20,000.

THE COURT: Do you understand that is the maximum sentence you are exposed to if I don't accept the plea negotiations and if you withdraw your plea from guilty by a jury, the statute we are concerned with has a $20,000 and/or five years imprisonment; do you understand that?

MR. SPINELLI: Yes.

MR. DE LUCIA: Yes.

MR. VARVELLA: Yes.

THE COURT: I would like to ask each of the defense attorneys whether he knows of any reason why his client should not plead nolo contendere?

MR. MILLER: I do not.

MR. FERRANTE: I have no reason.

MR. BOWMAN: No, your Honor.

THE COURT: I would like to ask Mr. Casey if, as an officer of this Court, he represents he is of the opinion if this case went to trial the Government could prove each and every essential element of the crime charged beyond a reasonable doubt; and if so, please state briefly the factual basis for the charge. The record should also note that I, in the course of plea negotiations, have had a fairly good review of the evidence. But, for the record, Mr. Casey, would you spell it out?

MR. CASEY: Your Honor, the Government would offer evidence through the means of intercepted wire communications that the individuals in front of you now, Mr. DeLucia, Mr. Spinelli, Mr. Varvella, were engaged in an illegal gambling operation consisting of horses, sports, and some numbers that the operation -- and that is the business itself -- has a gross revenue of over $2000 on four days in the month of December, 1971, during the time that the United States Government had a wire tap on certain telephones; that agents of the Federal Government would identify these individuals as being participants on those taped conversations and that other witnesses would testify to placing bets with these individuals.

THE COURT: How would you intend to prove that

the voices on those tapes were one or more of these individuals?

MR. CASEY: All of these individuals have submitted to voice exemplars so it would be the Chiarizio type of situation where agents or other persons testified to having reviewed the actual conversations, the voice exemplars, the known voice exemplars of the individuals, and drawing a conclusion therefrom.

I should point out that there would also be live testimony as to the actual place the wagers were --

THE COURT: Would there be an expert produced who would give expert opinions with respect to his views as to how much money the business --

MR. CASEY: That's correct. The Federal Bureau of Investigation would testify as to the nomenclature, the meaning of the conversations, how many individuals he felt nihis opinion were involved, and who they were, and to the actual amounts of gross revenue taken in by the business over a period of time.

THE COURT: It's my understanding that the Government has stated very briefly and, of course, the Court knows a lot more about this case, its ruling s on the suppression motion, the dismissal motions, and other motions plus chambers conferences, but it's my understanding that no one of the defendants before me wishes to contest these contentions of the Government by going to trial tomorrow.

MR. SPINELLI: That is correct.

MR. DE LUCIA: That is correct.

MR. VARVELLA: That's correct.

THE COURT: The Court is satisfied that each of the defendants may be put to plea and if he pleads nolo contendere, the Court finds that the plea is a voluntary one. That will be Spinelli, Varvella, and DeLucia.

MR. CASEY: Would the Court note the Government's objection?

THE COURT: The Court notes the Government's objection to the nolo contendere plea, which is overruled.

THE CLERK: Does the defendant Spinelli waive the reading of the indictment?

MR. SPINELLI: Yes.

THE CLERK: United States vs. Roger Spinelli, Criminal H-299, to the one count indictment, charging you with violation of Sections 1955 and 2 of Title 18, U. S. Code. What is your plea?

MR. SPINELLI: Nolo contendere.

THE CLERK: As to the defendant Varvella, does your client wish to waive the reading of the --

MR. BOWMAN: Yes.

THE CLERK: United States of America vs. Louis Varvella, Criminal H-299, to the one count indictment charging you with violation of Sections 1955 and 2 of Title 18,

U. S. Code, what is your plea?

MR. VARVELLA: Nolo contendere.

THE CLERK: As to the defendant DeLucia, does your client waive the reading of the indictment?

MR. FERRANTE: Yes.

THE CLERK: United States vs. John DeLucia, H-200, to the one count indictment, charging you with violation of Sections 1955 and ? of Title 18, U. S. Code, what is your plea?

MR. DE LUCIA: Nolo contendere.

THE CLERK: The defendants Spinnelli, Varvella, and DeLucia plead nolo contendere to Count 1.

THE COURT: Very well.

After consideration of the Government's evidence against the defendant Spinelli, and in view of the defendant's and his attorney's colloquy with the Court, the Court finds the defendant Spinelli guilty of the charge and a judgment of guilty shall enter on the record with respect to the defendant Spinelli.

After consideration of the Government's evidence against the defendant Varvella, and in view of the defendant's and his attorney's colloquy with the Court, the Court finds the defendant Varvella guilty of the charge and a judrment of guilty shall enter on the record as against the defendant Varvella.

With respect to the defendant DeLucia, after consideration of the Government's evidence against the defendant and in view of the defendant's and his attorney's colloquy with the Court, the Court finds the defendant DeLucia guilty of the charge. A judgment of guilty shall enter on the record with respect to the defendant DeLucia.

Any problem on the bond?

MR. CASEY: No.

THE COURT: Very well. The same bond may continue.

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CRIMINAL DOCKET
UNITED STATES DISTRICT COURT

D C Form No 100 Rev

TITLE OF CASE

THE UNITED STATES

vs.

WILLIAM R. BALOG
NICHOLAS V. IANESE
DANIEL LEVIN, a/k/a "Herman"
MAX J. GORDON
RICHARD M. IANESE
CHARLES S. SUGLIA
DANIEL RICCO
LOUIS MASTRO
NICHOLAS MESSINA, and
WALTER T. HARDY

ATTORNEYS

For U.S.:

John R. Tarrant
Special Attorney
Department of Justice
Room 1703
Post Office Building
Post Office Square
Boston, Massachusetts 02109
~~Peter C. Dorsey, U. S. Atty~~
Peter R. Casey, III
Special Attorney
450 Main Street
Hartford, Connecticut 06103

STATISTICAL RECORD	COSTS	DATE 1976	NAME OR RECEIPT NO.	REC	DISB
J. S. 2 mailed	Clerk				
J. S. 3 mailed	Marshal				
Violation	Docket fee				
Title					
Sec.					

DATE	PROCEEDINGS
1972	APPEARANCES ONLY
7/25	(see reverse side) ~~WILLIAM R. BALOG~~) - Richard T. Meehan NICHOLAS V. IANESE) 171 Golden Hill Street, Bridgeport, Conn.
8/15	as of 11/12/75 DANIEL LEVIN, aka "Herman") - Charles Hanken, 1115 Main St., Bpt., Conn. MAX J. GORDON) 1330 Fairfield Avenue, Bridgeport, Conn. 06604
7/25	~~RICHARD M. IANESE~~ - ~~Richard T. Meehan~~ (See Reverse side) ~~171 Golden Hill Street, Bridgeport, Conn.~~
7/20	CHARLES S. SUGLIA - Thomas E. Dardeni and Jacob D.Zeldes ~~855~~ Main Street, ~~Bridgeport~~, Connecticut 333 State Street, Bridgeport, Conn.
	DANIEL RICCO - J.Daniel Sagarin 855 Main Street, Bridgeport, Conn.
8/15	LOUIS MASTRO - Charles Hanken, 1115 Main Street 11/12/75 ~~1330 Fairfield Avenue~~, Bridgeport, Connecticut
7/25	NICHOLAS MESSINA - Richard T. Meehan 171 Golden Hill Street, Bridgeport, Conn.

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811

H-298 Crim. -
USA v. Balog, et als

DATE 1972	PROCEEDINGS
7/25	WALTER T. HARDY - Robert J. Michael ~~147 Deer Hill Avenue, Danbury, Conn. 06811~~ P.O. Box 96, Brookfield, Conn. 06804.
7/26/76	WILLIAM R. BALOG - Raymond Ganim 2192 Main St., Stratford, Conn. 06497
7/23/76	RICHARD M. LANESE - Charles Graham III, 666 Savin Ave., West Haven, Conn. 06516

RCL

CRIMINAL DOCKET
UNITED STATES DISTRICT COURT

D.C. Form No. 109 Rev.

TITLE OF CASE	ATTORNEYS
THE UNITED STATES vs. WILLIAM R. BALOG NICHOLAS V. LANESE, DANIEL LEVIN a/k/a "Herman", MAX J. GORDON, RICHARD M. LANESE, CHARLES S. SUGLIA, DANIEL RICCO, LOUIS MASTRO, NICHOLAS MESSINA and WALTER L. HARDY	*For U.S.:* Stewart H. Jones, U.S.Attorney John R. Tarrant, Special Atty 450 Main Street Hartford, Connecticut Tarrant: 1703 John W.McCormick P.O.Building Boston, Mass. 02109 *For Defendant* SEE SEPARATE SHEET

STATISTICAL RECORD	COSTS		DATE 1970	NAME OR RECEIPT NO.	REC	DISB
J.S. 2 mailed	Clerk		10/22	Deposit GF100869	3 Appeals	$15.00
J.S. 3 mailed	Marshal					
Violation U. S. Code	Docket fee					
Title 18	Fine (Gordon)	1500.00				
Sec. 1955, 2						

PROCEEDINGS

DATE 1970

10/22 The Grand Jury at Hartford returned a True Bill of Indictment charging viola- tion of 18 USC 1955, 2 - 1 Count - Unlawfully, wilfully, and knowingly conduct, finance, manage, supervise, direct, and own a part of an illegal gambling business. Bench Warrants ordered issued for each defendant. Indictment sealed for 30 days except on further Order of Court. (Clarie,J.)

Bench Warrants issued, and together with certified copies of Indictment, delivered Marshal for service.

7/2 Magistrate's papers for all defendants, filed. - Docket, Warrant of Arrest with return, 10/30. Appearance Bond without surety, Conditions of Release (Moore,M.) Appearance of Atty. Thomas E. Dardani as counsel for Defendant Charles Suglia filed.

7/24 PLEA of not guilty entered by defendants Suglia, Hardy, Balog, Nicholas Lanese, Levin, Gordon, Richard Lanese, Mastro and Messina. Motions to be filed August 14, 1970. Government response due 1 week later. CASE TRANSFERRED TO REPORT FOR FURTHER PROCEEDINGS ON MOTION OF COUNSEL AND BY ORDER OF COURT. (Clarie,J.)

7/24 Appearances of Atty. Richard T. Meehan as counsel for defendants Nicholas V. Lanese, Nicholas Messina, Richard M. Lanese and William R. Balog, filed.

(OVER)

H 1,4 - U.S.A. v.
WILLIAM R.BALOG, ET

DATE	PROCEEDINGS
1972	
7/25	File and Docket mailed to Bridgeport per Order of Court.
7/25	Appearance of Atty. Robert J. Michael as counsel for defendant Walter T. Hardy, filed.
8/7	Motion by Defendant Suglia For Discovery and Inspection, filed.
8/14	Motion for Bill of Particulars filed by defendant Walter T. Hardy, together with Notice thereof. Also, Motion For Discovery And Inspection.
8/15	Motions of Nicholas Messina To Dismiss Indictment; For Bill of Particulars; For Discovery and Inspection, filed. (Also Defts.Wm.R.Balog, R.M.Lanese and N.V.Lanese
8/15	Appearance of Charles Hanken, Esq., entered for Defendants Max J. Gordon; Daniel Levin and Louis Mastro.
8/15	Motions of Defendants Max Gordon, Daniel Levin and Louis Mastro for Extending of Time to File Additional Motions; Bill of Particulars; To Inspect Grand Jury Minutes and Transcripts; To Suppress and Return Evidence; To Suppress Evidence Relating to the Interception of Wire and Oral Communications; Discovery and Inspection, filed, together with Notices thereof.
8/22	Government's Answers to Motions of Defendants Balog, N.V.Lanese, R.M.Lanese, and Messina, for 1) Bills of Particular; 2) Discovery and Inspection, and 3) To Dismiss Indictment, filed.
8/22	Government's Answers to Motions of defendants Levin, Gordon, and Mastro for 1)Bill of Particulars; 2) Inspection of Grand Jury Minutes; 3) To Suppress Intercepted Wire Communications; 4) To Suppress Evidence and Return of Property; and 5) Discovery And Inspection; filed.
8/22	Government's Response to Motion of defendant Suglia For Discovery And Inspection, filed.
8/22	Government's Answers to Motions of defendant Hardy for Bill of Particulars, and 2) Discovery and Inspection, filed.
9/25	PLEA of guilty entered to Count 1 by Deft. Ricco, with leave to withdraw plea after appeal on the validity of wire tapping and Constitutionality of Indictment and also if sentenced to more than 3 months., (Newman,J.) Case continued on same bond for pre-sentence report.
9/25	HEARING on Defendants' Motions 1) For Bills of Particular and 2) For Discover and Inspection. - DECISION RESERVED. All other motions deferred until 1 week after Govt. complies with Discovery Motions. (Newman,J.)
9/25	Motion To Unseal Records Of Intercepted Communications Pursuant To 2518(8)(a) And (b) of Title 18, United States Code, filed and Order "Motion Granted," endorsed thereon. Documents unsealed and marked Courts Exhibits for Identification, as follows: 1 - Letter, 12/15/71, Petersen to Tarrant re Authorization To intercept wire communications; 2 - Envelope containing Logs, Report, & Return; 2A - Log 1, Mills & Flynn; 2B - Log 1, McNamara & Steinke; 2C - Log 1, Todaro; 2D - Log, 12/18/71, Slifka; 2E - Log 12/18/71, Thiel; 2F - Log 12/18/71, Todaro; 2G - Log 12/19/71, Michaels; 2H - Log 12/19/71, Handley; 2I - Log 12/19/71, O'Neil; 2J - Log, 12/20/71, Connolly; 2K - Log 12/20/71, Flynn & Todaro; 2L - Log 12/20/71, Buffum; 2M - Report to the Court; 2N - Return; 3 - Envelope; 3A - Order Authorizing Interception of Wire Communications; 3B - Application For Order Authorizing Interception of Wire Communications; 3C - Affidavit of Danny Steinke; 3D - Order Authorizing Use of Pen Register; 3E - Application For Authorization For Use of Pen Register; 4 - Application and Order re Interception of Wire Communications (Orders signed by Judge Blumenfeld); 5 - Transcript of 12/17/71; 6 - Transcript of 12/18/71; 7 - Transcript of 12/19/71; 8 - Transcript of 12/20/71 9 - Transcript of 12/17/71; 10 - Transcript of 12/18/71; 11- Transcript of 12/19/71; 12 -Transcript of 12/20/71; 13 - Transcript of 12/17/71; 14- Transcript of 12/18/71; 15 -Transcript of 12/19/71; 16 - Transcript of 12/20/71. (NEWMAN, J.) [Exs. 1-12 filed in Cr.#H-299,USA v. Spinelli,et als..

((CONTINUED))

BEST COPY AVAILABLE

DATE 1972	PROCEEDINGS
10/17 10/24	Appearance of Atty. Jacob D.Zeldes as counsel for Defendant Charles S. Saglia, filed. HEARING HELD ON MOTIONS: BILL OF PARTICULARS--Defendants Mastro, Levin and Gordon: Items 1,2,4,6 and 8 - Govt. will comply; Items 3,5,7 - Govt. objects, DECISION RESERVED. Def. Ricco: Items 8, 9 - Govt. will comply; Items 1 through 7 - Govt. objects, DECISION RESERVED. Defts. Balog, Messina, N.Lanese, R.Lanese: Citations put on record by Deft. [illegible] DECISION RESERVED without further argument. INSPECTION OF GRAND JURY MINUTES--Govt. will comply. DISCOVERY AND INSPECTION--Defts. Messina, Balog, N.Lanese, R.Lanese: Counsel agree on Items 1,2,3,4,5,7,11,12,14,16,17 and 21. Items 6,9,10 and 22 withdrawn; Items 15,18,19,20--DECISION RESERVED; Defts. Levin, Gordon, Mastro: Items 1 to 20, 22 to 25, 28 to 31, and 33--Govt. will comply; Items 21,26,27 and 32 - Govt. objects--DECISION RESERVED. Deft. Hardy: Items 1 to 7 - Govt. will comply. Deft. Saglia's Motion held in abeyance for further discovery. MOTIONS TO SUPPRESS AND RETURN EVIDENCE and TO SUPPRESS EVIDENCE RELATING TO INTERCEPTION OF WIRE AND ORAL COMMUNICATIONS; TO DISMISS INDICTMENT; and FOR EXTENSIONS OF TIME TO FILE ADDITIONAL MOTIONS--Off, without prejudice. Motions of Defts.Levin, Gordon, Mastro To Dismiss Indictment, filed. All 3 motions off without prejudice.
10/24	Motion To Unseal And Duplicate Tapes Of Recorded Conversations Intercepted Pursuant to 18 USC 2518, filed by Govt. and Order, entered. (Copies to be sent all interested parties.) Court requests Govt. to order transcript of all prior proceedings in this case. (ZAMPANO, J.) (M-10/25/72)
11/15 ++ 10/17	Transcript of proceedings of Oct.24,1972 filed. (Russell,R.) Motion of Defendants to Enlarge Territorial Limits of Bond for travel to State of Florida with Consent of Spec.Atty.Paul Coffey, filed. Order "11/17/72. Motion Granted." entered. (Zampano,J.) (M-11/16/72)
11/20	Court Reporter's Notes of proceedings held Oct.24,1972, filed at New Haven.
++ 11/17	(Russell) Reporter's Sound Recording of proceedings of July 24,1972,filed at New Haven. (Alperber,R.)
2/-	Discovery And Inspection (voluntary response), filed by Government.
2/26	DISPOSITION: Deft. RICCO - 1 year imprisonment. Execution of sentence suspended after 2 months and placed on probation for 2 years.
2/26	Judgment and Commitment/Probation, entered. (Newman,J.) (M-3/1/73) Certified copies hand delivered to Marshal for service and Probation Officer.
3/6	RULINGS ON DEFENDANTS' PRETRIAL MOTIONS, filed. (Zampano,J.) (M-3/6/1973) Motions For Discovery And Inspection: Defts.Balog, Messina, R.Lanese, N.Lanese--¶¶19, 18, DENIED. Defts. Mastro, Gordon, Levin--¶¶1-20, 22-25,27-33, Govt. has agreed to comply, ¶26, DENIED, ¶30, DENIED. Defts. Saglia--¶¶3,5,6,9,10, GRANTED BY AGREEMENT; ¶¶1,2,4,7,8, DENIED. Motions For Bills Of Particulars: Defts. Balog,R.Lanese, N.Lanese & Messina--¶1, GRANTED, ¶2-6, DENIED, except Govt. agreed to specify date, time, place. Defts. Levin, Gordon, Mastro--¶¶1,2,4,6,8, GRANTED ABSENT OBJECTION, ¶¶3,7, GRANTED to extent Govt. able to specify each deft's. involvement; ¶5, DENIED. Deft. Hardy--¶¶1-7, DENIED. ¶¶8,9, GRANTED; ¶10, DENIED. Motions to Inspect Grand Jury Minutes--DENIED. Motions For Extension Of Time--GRANTED, ABSENT OBJECTION. ALL OTHER MOTIONS OFF WITHOUT PREJUDICE.
3/7	Copies of Rulings sent MJD, CBC, RCH, JON, AHL, and Attys.Meehan, Hansen, Dardani, Gelbert, Sagarin, and Michael.
3/8	Def. Ricco's Motions 1) To Reduce Sentence, and 2) To Extend Time In Which To File Notice Of Appeal, filed together with Notice of Motion.
3/12	CHAMBERS HEARING re Deft. Max J.Gordon. Court reporter's Change of Plea and Disposition to be held on Mar.26,1973. (Zampano,J.)
3/12	HEARING held on Deft. Daniel Ricco's Oral Motion For Reduction Of Sentence. DECISION RESERVED. (Newman,J.)
3/14	Deft. Ricco's Motion To Extend Time In Which To File Notice Of Appeal endorsed: "3/14/73. Time to file notice of appeal is extended until 5 days after the pending motion to reduce sentence is ruled upon." (Newman,J.) (M-3/14/73) Copies of endorsement sent Attys. Tarrant and Sagarin.
3/12	Court Reporter's Notes of proceedings held on Mar.12,1973, filed at New Haven. (Gale, R.) ((OVER))

DC-115 Criminal Continuation Sheet

DATE 1973	PROCEEDINGS
3/23	Court Reporter's Transcript of proceedings held Mar.12,1973,(re Deft.Gordon), filed. (Russell,R.)
3/26	CHANGE OF PLEA: DEFT. GORDON - Plea of not guilty entered on July 24, 1972, erased from record and plea of nolo contendere with a finding of guilty by the Court entered to Count 1. Pre-sentence report previously submitted to Court. (Zampano,J.)
3/26	DISPOSITION: DEFT. GORDON - 1 year imprisonment suspended after 6 months. Deft. placed on probation for 3 yrs. from that date. Sentence of imprisonment to run concurrently with sentence to commence Apr.2,1973, imposed by Judge Murphy in Crim.#H-211. In addition, Deft. is fined $1,500.00 to be paid within 6 months. If fine not paid in that period of time, it shall be a committed fine. (Zampano, J.)
3/26	Judgment and Commitment/Order of Probation, entered. (Zampano,J.) (M-3/26/73). Certified copies handed Marshal and Probation Officer.
3/27	Court Reporter's Notes of proceedings held March 12,1973, filed. (Russell,R.)
4/4	Court Reporter's Notes of proceedings held March 26,1973,filed at New Haven. (Russell,R.)
4/11	Court Reporter's Sound Recording of proceedings held Mar.26,1973, filed at New Haven. (Russell, R.)
4/13	Marshal's return showing service, filed. - Judgment and Commitment/Probation re DEFT. MAX GORDON.
4/13	Marshal's non est return, filed. - Judgment and Commitment/Probation, DEFT. RICCO
4/16	ORDER on Deft.Ricco's Motion For Reduction of Sentence, entered. (Newman,J.) (M-4/16/73) Sentence previously imposed reduced to imprisonment for 1 year; execution suspended forthwith and defendant placed on probation for 2 years. Special condition of probation that defendant enroll for 60 days in Work Release Section of Bridgeport Correctional Center, 60-day period to begin as soon as Center can make arrangements to accommodate defendant. Copies of Order sent MJB, TEC, RCZ, JON, AHL and Attys. Tarrant and Sagarin. Two certified copies handed Probation Officer.
4/23	Notice of Appeal, filed by Defendant DANIEL RICCO. Copies of Notice of Appeal and Docket Entries forwarded Clerk, U.S.C.A., Copies of Notice of Appeal sent Attys. Meehan, Hanken, Dardani, Sagarin, and Michael and Deft. Ricco, and Atty.Zeldes, and Tarrant.
5/10	COURT OF APPEALS ORDER re Docketing and filing of Briefs re Record On Appeal of Deft.RICCO, filed. (M-5/10/73)
5/18	Motion (Letter) For Reduction Of Sentence, filed by DEFT. MAX GORDON.
5/18	ORDER Denying Motion To Reduce Sentence, entered. (Zampano,J.) (M-5/18/73) Copies sent RCZ, TEC, MJB, JON, AHL, ATTYS. Meehan, Hanken, Dardani, Zeldes, Sagarin, and Michael.
5/24	Record On Appeal re DEFT. RICCO forwarded Clerk, U.S.C.A., New York, New York. Certified Mail #257945. Copies of Docket Entries, Index and List of Exhibits forwarded Attys. Tarrant, Sagarin, Hanken, Dardani, Zeldes, Michael, Meehan.
5/29	Acknowledgment of receipt of Record On Appeal re Deft. RICCO received from Clerk U.S.C.A.
6/1	Certified Mail Receipt #257945, filed. - Jean E.DeFreitas.
6/27	Motion For A Stay Of Proceedings, filed by Government with signatures of all Defense counsel as consent thereto.
6/28	Endorsement on Motion For Stay of Proceedings, entered.--GRANTED. Zampano,J.) (M-6/28/73) Copies sent Attys. Tarrant, Meehan, Hanken, Zeldes and Michael.
9/26	Notice of Readiness (for trial), filed by Atty. Tarrant.
11/7	RECORD ON APPEAL, re Deft. Ricco, returned from Clerk, U.S.C.A., and acknowledgment of receipt forwarded.
11/26	Informal Chambers Conference to be held Dec.9,1974, at 2:00 p.m. over to Dec.10, 1974, at 2:00 p.m.
12/13	ORDER, filed and entered. Order of 6/28/73 staying proceedings is hereby vacated. (Zampano, J.) (M-12/13/74) Copies to RCZ, MJB, TEC, JON and Attys. Meehan, Hanken, Dardani, Zeldes, Sagarin and Michael, and Tarrant.

DATE	PROCEEDINGS
1975	
1/8	Government's Motion to Compel Voice Exemplars, filed.
1/8	Memorandum of the United States in Support of Motion to Compel Voice Exemplars, filed.
4/8	Attested copy of Mandate from U. S. Court of Appeals, filed and entered. (Oakes, J.) M-4/16/75 Ordered that motion made by counsel for appellant Daniel Ricco, filed March 17, 1975, to withdraw the appeal fro U.S.D.C. for Dist. of Conn., on consent is granted.
7/10	Consolidated Motion on Behalf of the Undersigned Defendants (all defendants) to Dismiss the Indictments Because Defendants Have Been Denied Speedy Trial, filed. (Motion is consolidated with same motion in H-299)
9/4	Government's Answer to Consolidated Motion on Behalf of All Defendan to Dismiss the Indictments Because Defendants Have Been Denied Speedy Trial, filed.
10/20	HEARING held on All Pending Motions - Hearing on Defendants' Motion to Dismiss - Decision reserved. Hearing on Government's Motion for Voice Exemplars - Decision reserved. Defendants' Brief to be filed on or before 10/28. Government's Reply Brief on or before 11/3/75. Court opens at 10:45 a.m. Recess at 11:45 a.m. ZAMPANO, J. (Russell, R., Thorner, D.C.) M-10/20/75
10/29	Transcript of proceedings held on October 20, 1975 at New Haven, before Zampano, J., filed. (Russell, R.)
10/29	Brief in Support of Defendant's Motion to Dismiss and in Opposition to Government's Motion for Voice Exemplars, filed.
10/31	Court reporter's notes of proceedings held before Zampano, J. on October 20, 1975, filed at New Haven. (Russell,R.)
11/6	Letter dated Nov. 4, 1975 from Atty. Casey to Judge Zampano requesti an additional week to respond to speedy trial issue, endorsed: "11/5/75 Approved." Zampano, J. M-11/7/75 Copies to all counsel of record.
11/14	Defendant Walter T. Harty's Computation of Time Re Consolidated Moti on behalf of All Defendants to Dismiss the Indictments Because Defendant have Been Denied Speedy Trial, filed.
11/17	Response of the United States to Defendants' Motion to Dismiss the Indictment, filed.
2/17	Pur Misc. Cal. of ROZ: Motion to Dismiss over to 3/15/76. (Gale,R., Thorner, D.C.) M-2/23/76
3/15	HEARING held on Motion to Dismiss - Court hears oral argument on the Motions. Motion to Dismiss as to Balog is denied for the reasons stated in open Court.* ZAMPANO, J. Court 10:38 a.m. to 11:30 a.m. (Gale, R., Rowe, D.C.) M-3/15/76 *Counsel for govt. and deft. are to ge together for scheduling purposes with tentative date of May 4th for jury selection.

(Continued on Page 3a.)

DATE 1976	PROCEEDINGS
3/15	Government's Motion to Compel Voice Exemplars, endorsed: "3/15/76 For reasons stated in open court, the motion is granted." Zampano, J. M-3/16/76 Copies to all counsel in H-298 and H-299.
3/15	Consolidated Motion on Behalf of the Undersigned Defendants to Dismiss the Indictments Because Defendants Have Been Denied Speedy Trial, endorsed: "3/15/76 For reasons stated in open court, the motions are denied." Zampano, J. M-3/16/76 Copies to all counsel in H-298 and H-299
4/6	Defendants' Motion for Suppression of Evidence and for Return of Seized Property, filed.
4/6	Defendants' Brief on Motion to Suppress, filed.
4/8	DEFT. RICHARD LANESE - Motion to Suppress, filed.
4/8	DEFT. WILLIAM BALOG - Motion to Suppress, filed.
4/8	DEFT. NICHOLAS V. LANESE - Motion to Suppress (re: Loose currency, etc), filed. Motion to Suppress (re: Search warrant - 3765 Main St., Bpt.), filed.
** 4/13	DEFT. CHARLES S. SUGLIA - Motion of Defendant Charles S. Suglia to Suppress Use of and for Return of Property, filed.
4/12**	DEFTS. WM. BALOG; NICHOLAS LANESE and RICHARD LANESE - Motion for Extension of Time to File Memorandum in Support of Defendant's Motions for Suppression of Evidence and Return of Seized Property, filed.
4/20	DEFTS. WM. BALOG; NICHOLAS LANESE and RICHARD LANESE - Motion for Extension of Time to File Memorandum in Support of Defendant's Motions for Suppression of Evidence and Return of Seized Property,*endorsed: " 4/19/76 Granted, absent objection." ZAMPANO, J. M-4/21/76 Copies to all counsel of record. *(Extension until May 3, 1976)
4/26	Court Reporter's Notes of proceedings held March 15, 1976 in New Haven before Zampano, J., filed in New Haven. (Gale, R.)
5/3	Brief in Support of Defendants' (Wm. Balog, Nicholas Lanese and Richard Lanese) Motions to Suppress, filed.
5/3	Response of the United States to Defendants' Motion to Suppress Intercepted Wire Communications, filed.
5/1[illegible]	Defendants' Reply Brief on Motion to Suppress, filed.
6/1	HEARING held on 1. Motion to Suppress Wiretap Interceptions - Motions denied, for reasons stated in open court. 2. Defendant's [illegible] (Michael Piazza) Motion for Severance and Separate Trial - Motion denied without prejudice for reasons stated in open court. Defendants oral Motion to Take the Deposition of John Mitchell - denied. ZAMPANO, J. Court opens at 11:00 a.m. Adjourned at 11:50 a.m. (Gale, R., Thorner, D.C.) M-6/1/76

DATE	PROCEEDINGS
1976	
6/2	Defendants' Motion for Suppression of Evidence and for Return of Seized Property, endorsed: "6/1/76 For reasons stated in open court, this motion is denied." ZAMPANO, J. M-6/4/76 Copies to all counsel of record.
6/8*	DEFTS. WM. BALOG, NICHOLAS LANESE and RICHARD LANESE - Motion for Supplemental Discovery, filed.
6/8	Response of the United States to Defendants' Motion to Suppress Physical Evidence, filed.
6/4*	Court Reporter's Notes of proceedings held on June 1, 1976, before Zampano, J., at New Haven, filed in New Haven. (Gale, R.)
6/14	Motion of the United States for A Court Order Directing that the Defendants Identify Themselves by Name when Submitting to Previously Ordered Voice Exemplars, filed.
6/24	Response of the United States to Motion for Supplemental Discovery, filed.
6/28	DEFTS. WM. BALOG, NICHOLAS LANESE and RICHARD LANESE - Objection to Motion for a Further Order for Identification When Submitting to Voice Exemplars, filed.
7/6	HEARING held on ---------- Motion re U. S. Re. Voice Exemplars & Defendant's Motion for Supplemental Discovery - Over to 7/19. (ZAMPANO, J.) (Gale, R., Thorner, D. C.) M-7/7/76
7/19	HEARING held on MOTION TO SUPPRESS - denied. Deft's Motion for Supplementary Discovery - granted. Motion (U.S.) Re. Voice Exemplars - Govt. motion for voice exemplars is granted. Court orders that defts. Balog, Lanese (2), Piazza and Messina are to state their names prior to reading what the gov't submits when giving the exemplars. Ruling also applies to Mr. Cohen. 11:42 a.m. to 11:48 a.m. Recess. Motion to Suppress statements of R. Lanese. Court will reserve decision and hold hearing at trial. Govt. is to respond re: articles taken from Varvella person in 24 hrs. If a response is given, deft. is allowed 7 days to make appropriate motions. Motion to Withdraw as to Nicholas Messina, William Balog and Richard Lanese, filed by Atty. Meehan. Deft. Messina advises he has retained Lawrence Merly of Bpt. Deft. Balog has one week to return with appt'd. counsel to this Court, if he does not have counsel Court will appt. counsel for him. Deft. R. Lanese file financial affidavit, after which Court will appt. counsel. Court advises counsel that Sept. 14, 1976 is a firm date for case to be ready for trial, no continuances will be granted.* Court opens at 11:24 a.m. Adjourned at 12:52 p.m. *Address for Joseph Brechy is P. O. Box , Westport, Conn. has not been receiving all pleadings or calendars in this matter. ZAMPANO, J. M-7/19/76 (Rowe, D.C., Gale, R.)
7/19	DEFT. RICHARD LANESE - Financial Affidavit, filed.
7/19	Court Reporter's Notes of proceedings held on July 19, 1976, filed in New Haven. (Gale, R.)

(Continued on Page 4a)

DATE 1976	PROCEEDINGS
7/20	Motion of the U. S. for a Court Order Directing that the Defendants Identify themselves by Name When Submitting to Previously Ordered Voice Exemplars, endorsed: "7/19/76 Motion is granted." ZAMPANO, J. M-7/21/76 Copies to all counsel of record.
7/20	DEFTS. BALOG, N. LANESE & R. LANESE Motion for Supplemental Discovery endorsed: "7/19/76 Absent objection, the motion is granted." ZAMPANO, J. M-7/21/76 Copies to all counsel of record.
7/20	DEFT. R. LANESE Motion to Suppress, endorsed: "7/19/76 For reasons stated in open court, the motion is denied, except that the motion to suppress statements of the defendant is reserved for time of trial." ZAMPANO, J. M-7/21/76 Copies to all counsel of record.
7/20	Motion of Defendant Charles S. Suglia to Suppress Use of and for Return of Property, endorsed: "7/19/76 For reasons stated in open court the motion is denied." ZAMPANO, J. M-7/21/76 Copies to all counsel.
7/23	DEFT. W. BALOG - Motion to Suppress, endorsed: "7/19/76 For reasons stated in open court, the motion is denied." ZAMPANO, J. M-7/26/76 Copies to counsel.
7/23	DEFT. N.LANESE - Motion to Suppress (re: Loose currency, etc.) endorsed: "7/19/76 For reasons stated in open court, the motion is denied." ZAMPANO, J. M-7/26/76 Copies to counsel.
7/23	DEFT. N. LANESE - Motion to Suppress (re: Search warrant -3765 Main St., Bpt.) endorsed: "7/19/76 For reasons stated in open court, the motion is denied." ZAMPANO, J. M-7/26/76 Copies to counsel.
7/23	CJA Form 20,(DEFT. R. LANESE), executed by Judge Zampano appointing Charles Graham III, Esq. as substituted counsel for defendant Richard M. Lanese, filed. Copies mailed Attorney and Administrative Office.
7/26	HEARING - Atty. Meehan advises Court that Mr. Balog has retained Atty. Raymond Ganim of Bpt. Mr. Ganim will file his appearance and mail it in to the Court. ZAMPANO, J. Court 10:48 to 10:49 a.m. (Gale,R., Rowe, D.C.) M-7/26/76
9/7	Marshal's Return showing service, filed. (Subpoena to Produce Document or Object - Alan J. McBean)
9/13	Marshal's Returns showing service, filed. (3 Subpoenas to Testify - Anthony Ialeggio, Mrs. Vernon Ufkin and Anthony Capasso)
9/13	CHANGES OF PLEAS: DEFT. WILLIAM BALOG - Plea of not guilty entered July 24, 1972 erased from record and plea of nolo contendere entered to Count 1. Court enters a finding of guilty to Count 1. Case continued on same bond for sentencing. 2:15 P. M. M-9/14/76 ZAMPANO, J. (Consiglio, D.C., Gale, R.)
9/13	DEFT. NICHOLAS LANESE - Plea of not guilty entered on July 24, 1972 erased from record and plea of nolo contendere entered to Count 1. Court enters a finding of guilty to Count 1. Case continued on same bond for sentencing. Written Plea of Nolo Contendere, filed by deft. 2:15 P.M. ZAMPANO,J. (Gale, R., Consiglio, D. C.) M-9/14/76

(Continued on Page 5)

DATE	PROCEEDINGS
1976	
9/13 (cont.)	DEFT. DANIEL LEVIN a/k/a "HERMAN" - Plea of not guilty entered July 24, 1972 erased from record and plea of guilty to Count 1 entered. Case continued on same bond for sentencing. 2:35 P.M. M-9/14/76 ZAMPANO, J. (Gale, R., Consiglio, D.C.)
9/13	DEFT. RICHARD LANESE - Plea of not guilty entered on July 24,1972 erased from record and plea of guilty to Count 1 entered. Case continue on same bond for sentencing. 2:35 P.M. M-9/14/76 ZAMPANO, J. (Gale, R. Consiglio, D.C.)
9/13	DEFT. CHARLES SUGLIA - Plea of not guilty entered July 24, 1972 erased from record and plea of nolo contendere entered to Count 1. Court enters a finding of guilty to Count 1. Case continued on same bond for sentencing. 2:15 P. M. M-9/14/76 ZAMPANO, J. (Gale, R., Consiglio, D.
9/13 *	DEFT. LOUIS MASTRO - Plea of not guilty entered July 24, 1972 erased from record and plea of nolo contendere entered to Count 1. Court enters a finding of guilty to Count 1. Case continued on same bond for sentencing. 2:15 P. M. M-9/14/76 ZAMPANO, J. (Gale, R., Consiglio, D.C
9/14	DEFT NICHOLAS MESSINA - Substitute Information, filed by Gov't, Deft. put to plea again and pleads guilty to Count 1 of the Substitute Information - This is an Alford plea. Case continued on same bond for sentencing. Original Indictment to be dismissed at sentencing. 10:15AM M-9/14/76 ZAMPANO, J. (Gale, R., Rowe, D.C.)
9/14	DEFT. WALTER T. HARDY - Substitute Information, filed by Gov't. Deft. put to plea again and pleads guilty to Count 1 of the Substitute Information - This is an Alford plea. Case continued on same bond for sentencing. Original Indictment to be dismissed at sentencing. 10:15 AM M-9/14/76 ZAMPANO, J. (Gale, R., Rowe, D.C.)
9/14	JURY TRIAL ASSIGNMENT LIST: Court opens at 10:15 a.m. 11:10 to 11:30 a.m. Recess. 11:30 - 1:00 p.m. Jury selection. 1:00-2:00 Recess. 2:15 p.m. - 4:15 p.m. Jury selection. Change of Plea taken as to Defts. Hardy and N. Messina - other defendants changed plea on 9/13/76. ZAMPANO, J. (Gale, R., Rowe, D.C.) M-9/15/76
9/15	Appearance of Charles A. Graham, Esq., entered for Deft. Richard M. Lanese.
9/13*	Court Reporter's Notes of proceedings held on Sept. 13, 1976 in N. H. before Zampano, J., filed in New Haven. (Gale, R.)
9/14*	Court Reporter's Notes of proceedings held on Sept. 14, 1976 in New Haven before Zampano, J., filed in New Haven. (Gale, R.)
9/23	Marshal's Non-est Return, filed. (Subpoena to Testify - Danny F. Steinke)
10/1	Court Reporter's sound recording of proceedings held on Sept. 13, 1976, filed in New Haven.
10/1	Court Reporter's sound recording of proceedings held on Sept. 14, 1976, filed in New Haven.

(Continued on Page 5a)

DATE 1976	PROCEEDINGS
	DISPOSITIONS:
10/12	DEFT. WILLIAM BALOG - Imprisonment for 2 years. Sentence of imprisonment suspended after 3 months. Defendant placed on probation for 2 years. Deft. required to pay fine of $5,000 within one year. If there is an appeal the execution of sentence shall be stayed until the conclusion of all appellate procedure, if no appeal is taken the deft. is to surrender himself in 10 days to the U. S. Marshal. 11:15 a.m. to 12:10 p.m. ZAMPANO, J. M-10/12/76 (Gale,R., Rowe, D.C.)
10/12	DEFT. NICHOLAS LANESE - Imprisonment for 2 years. Sentence of imprisonment suspended after 3 months. Defendant placed on probation for 2 years. Deft. required to pay fine of $7,500.00 payable in one year. If there is an appeal the execution of sentence shall be stayed until the conclusion of appellate procedures. If no appeal is taken, deft. shall present himself to U. S. Marshal in 10 days. 11:15 a.m. ZAMPANO, J. M-10/12/76 (Gale, R., Rowe, D.C.)
10/12	DEFT. DANIEL LEVIN - Imprisonment for one year. Sentence of imprisonment suspended forthwith. Defendant placed on probation for one year. Deft. required to pay fine of $1,500.00, payable in 9 months. If appeal is taken, probation shall commence at conclusion of all appellate procedures. 11:15 a.m. ZAMPANO, J. M-10/12/76 (Gale, R., Rowe, D.C.)
10/12	DEFT. RICHARD LANESE - Imprisonment for 2 years. Sentence of imprisonment suspended forthwith. Defendant placed on probation for 2 years. Deft. required to pay fine of $3,000.00, payable in one year. If appeal is taken, probation shall commence at conclusion of all appellate procedures. 11:15 a.m. ZAMPANO, J. M-10/12/76 (Gale, R., Rowe, D.C.)
10/12	DEFT. CHARLES SUGLIA - Imprisonment for one year. Sentence of imprisonment suspended forthwith. Deft. placed on probation for one year. If appeal is taken, probation shall commence at conclusion of all appellate procedures. ZAMPANO, J. M-10/12/76 (Gale,R., Rowe,D.C.)
10/12	DEFT. LOUIS MASTRO - Imprisonment for 2 years. Sentence of imprisonment suspended forthwith. Deft. placed on probation for 2 years. Deft. required to pay fine of $3,000.00, payable in year. If appeal is taken, probation shall commence at conclusion of appellate procedure. 11:15 a.m. ZAMPANO, J. M-10/12/76 (Gale, R., Rowe, D.C.)
10/12	DEFT. NICHOLAS MESSINA - Defendant required to pay fine of $1,000.00 payable in 60 days. ZAMPANO, J. M-10/12/76 (Gale, R., Rowe, D.C.)
10/12	DEFT. WALTER T. HARDY - Defendant required to pay fine of $1,000.00, payable in 60 days. ZAMPANO, J. M-10/12/76 (Gale, R., Rowe, D.C.)
10/13	DEFT. RICHARD LANESE - Judgment and Order of Probation, entered. ZAMPANO, J. M-10/15/76 Copies to Attys. Casey and Graham. Two certified copies handed Probation officer.
10/13	DEFT. CHARLES SUGLIA - Judgment and Order of Probation, entered. ZAMPANO, J. M-10/15/76 Copies to Attys. Casey, Dardani, Zeldes and Amendola. Two certified copies handed Probation officer.

(Continued on Page 6)

DATE 1976	PROCEEDINGS
10/13	DEFT. LOUIS MASTRO - Judgment and Order of Probation, entered. ZAMPANO, J. M-10/15/76 Copies to Attys. Casey and Hanken. Two certified copies handed to Probation officer.
10/13	DEFT. NICHOLAS MESSINA - Judgment, entered. ZAMPANO, J. M-10/15/76 Copies to Attys. Casey and Merly.
10/13	DEFT. WALTER T. HARDY - Judgment, entered. ZAMPANO, J. M-10/15/76 Copies to Attys. Casey and Michael.
10/14	DEFT. WILLIAM R. BALOG - Judgment and Commitment, entered. ZAMPANO, M-10/15/76 Copies to Attys. Casey and Ganim. Three certified copies handed U. S. Marshal, two certified copies handed Probation Officer.
10/14	DEFT. NICHOLAS LANESE - Judgment and Commitment, entered. ZAMPANO, J. M-10/15/76 Copies to Attys. Casey and Meehan. Three certified copies handed U. S. Marshal, two certified copies handed Probation Officer.
10/14	DEFT. DANIEL LEVIN - Judgment and Order of Probation, entered. ZAMPANO, J. M-10/15/76 Copies to Attys. Casey and Hanken. Two certified copies handed to Probation officer.
10/20	DEFT. WILLIAM BALOG - Notice of Appeal, filed by deft. Copies to Attys. Meehan, Ganim, Casey, and Tarrant, also deft. and Prob. Office.
10/20	DEFT. NICHOLAS LANESE - Notice of Appeal, filed by deft. Copies to Attys. Tarrant, Casey, Meehan, deft. and Prob. Office.
10/20	DEFT. RICHARD LANESE - Notice of Appeal, filed by deft. Copies to Attys. Meehan, Graham, Casey and Tarrant, deft. and Prob. Office.
10/20	Three copies of Form B, along with instructions handed to representative of Atty. Meehan.
10/21	Notice to Probation Office on Filing Notice of Appeal and certified copies of Notice of Appeal handed Probation Officer in Bridgeport, Conn.
10/21	DEFT. NICHOLAS MESSINA - Order for Dismissal of Indictment, filed by U. S. Attorney, with leave of Court granting dismissal, entered, thereon. ZAMPANO, J. M-10/22/76 Copies to Attys. Tarrant, Casey and Merly.
10/21	DEFT. WALTER T. HARDY - Order for Dismissal of Indictment, filed by U. S. Attorney, with Leave of Court granting dismissal, entered. thereon. ZAMPANO, J. M-10/26/76 Copies to Attys. Tarrant, Casey and Michael.

D. C. 109 Criminal Continuation Sheet

STATE OF NEW YORK)
: SS.
COUNTY OF RICHMOND)

ROBERT BAILEY, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N. Y. 10302. That on the 3 day of Jan., 1977 ~~1976~~ deponent served the within upon

Hon. Peter Daucey

attorney(s) for

Appellee

in this action, at

270 Orange St., Room 310
P.O. Box 1824
New Haven, Connecticut

the address(es) designated by said attorney(s) for that purpose by depositing _____ copies of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States post office department within the State of New York.

ROBERT BAILEY

Sworn to before me, this 3 day of Jan., 1977, ~~1975~~.

WILLIAM BAILEY
Notary Public, State of New York
No. 43-0132945
Qualified in Richmond County
Commission Expires March 30, 1978